

**IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
DOMHCV2009/0399
[CIVIL]**



BETWEEN:

THE DEVELOPMENT AND PLANNING CORPORATION

Claimant

and

GIFFORD ALCAN IRISH

Defendant

Before: The Hon. Justice Brian Cottle

Appearances:

Ms. Sherma Dalrymple & Tameka Hyacinth for Claimant
Mr. Kondwani Williams for Defendant

2011: June 15th, 16th
August 26th
September 12th

JUDGMENT

- [1] **COTTLE J:** The Defendant is the owner of a parcel of land at Checkhall. He applied for and obtained planning permission to construct his dwelling house on the parcel. In accordance with the approved plans he built a single family dwelling house in which he now resides with his family. Subsequently the Defendant made certain "extensions and expansions" to his home. He added 24 apartment suites in a 4 storey 'extension' of his home. He did so without planning permission as would be required under the Physical Planning Act.
- [2] Officers from the planning corporation visited the 'extension' while it was being built. They spoke to the Defendant. The Defendant ignored them and continued his construction works. The Defendant is a banker. He is aware of the requirement to obtain planning permission. In his evidence he admitted that his bank would not advance loan funds for such a project without seeing the approved plans.

[3] Finally in March 2009 the Claimants served the compliance notice demanding that the Defendant cease all construction works immediately and that he apply for and obtain planning permission for the works forthwith. The Defendant did not comply. Even as late as the date of this trial he has not applied for planning permission. The Claimants filed a Fixed Date Claim in December 2010. They sought an order that he Defendant comply with the Physical Planning Act. On 18th January 2010 the Claimants filed an amended claim form seeking

1. ***A Declaration that the Defendant is in breach of section 17 (1) of the Physical Planning Act, Act No. 5 of 2002***
2. ***An injunction restraining the Defendant whether by himself, his servants or his agents from building, erecting, construction or causing to be built, erected or constructed, development works on the premises of Lot No. 29 of the Checkhall Valley Development in the parish of St. Paul in the Commonwealth of Dominica without the requisite development permission***
3. ***An Order that the Defendant demolish the three floor extension constructed without development permission on the premises of Lot No. 29 of the Checkhall Valley Development in the parish of St. Paul in the Commonwealth of Dominica.***
4. ***An order that the Defendant apply for and obtain development permission before commencing on the said lot any construction activity for which development permission is required under the Physical Planning Act.***
5. ***Such further or other relief as the Court sees fit***
6. ***Costs***

By this time the Defendant had completed his building works. 21 of the 24 apartments had been rented out

[4] At the trial the Claimant led evidence from its engineers that the Defendants building appeared to be structurally unsound and presented health concerns in that adequate arrangements for waste water disposal were not apparent.

[5] The Defendant led evidence that the structure was safe and sewage had been adequately addressed. He admitted that he had not sought or obtained planning permission for his project.

[6] From the forgoing it is clear that both parties agree that the Defendant is in breach of Section 17 (1) of the Physical Planning Act

“No person shall carry out any development of land except under and in accordance with the terms of development permission granted in that behalf prior to the commencement of such development, on an application made in accordance with the regulations made under section 88, unless the development is permitted development authorised under subsection (2)...”

The issue that confronts the Court is what sanction should be the Defendant now face in the circumstances.

[7] Counsel for the Defendants in his closing submissions, urged the court not to make an order for demolition of the offending structure. He does so, on the basis that damages would be an adequate remedy. He also contends that there was delay, acquiescence and laches by the Claimant. Counsel also suggests that the court should have regard for third party interests.

Damages not an adequate remedy.

[8] The Claimant has a statutory duty to regulate the design and construction of buildings in Dominica. This is an effort to secure the safety of occupants of these buildings. It is difficult to see how a breach of the Defendant's obligations to secure planning permission can be remedied by an award of damages.

Acquiescence and Laches

[9] The available evidence shows that the Claimants have been seeking to cause the Defendant to comply with the planning legislation since they became aware of the new development in 2009. A compliance notice was served on the Defendant on 4th March 2009 requiring him to cease all construction immediately and that he apply for and obtain planning permission for the new works by April 20th 2009. The defendant did not comply with the notice. He continued to build. He has now completed the structure and has yet to apply for the planning permission. Faced with such intransigence the Claimant filed the present claim.

[10] It is disputed that the Defendant has acted in breach of Section 17 (1) of the Act. Under section 41 the Claimant now approaches the court to enforce the compliance order.

[11] The only issue with which thus court must now grapple is the question of what remedy should the court provide the claimant. The Claimants seek an order for

demolition of the offending development. Naturally the Defendant resists this. The principles which govern the grant of interim injunctions offer no assistance in this case. The Defendant has knowingly acted in blatant disregard of the applicable legislative provisions. More importantly the evidence reveals that there are real concerns about the structural integrity of the Defendants structure. Yet I am also mindful of the substantial economic impact that an order for demolition would have.

- [12] In the circumstances the order of this court is that the Defendant apply forthwith for planning approval of the new development. He will have to provide the Claimant with all relevant plans and specifications. He will have to demonstrate that the structure is sound and that all concerns about waste water disposal are properly addressed. Should the Defendant be unable to secure the needed approvals the structure will have to be demolished at the expense of the Defendant.
- [13] The defendant will pay costs to the Claimant in the sum of \$14, 000.00



Brian P. Cottle
Justice Brian Cottle
High Court Judge