EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT

GRENADA

GDAHCV2010/0564

BETWEEN:

ROHIT PERSAUD

Claimant

and

PLANNING AND DEVELOPMENT AUTHORITY GRENADA

Defendant

Before:
Kimberly Cenac-Phulgence Master [Ag]

Appearances:
Ms. Anyika Johnson of Counsel for the Claimant
Mr. Cajeton Hood with Mr. Adebayo Oluwu of Counsel for the Defendant
Claimant present

2014: May 21, 29.

DECISION ON APPLICATION

[1] CENAC-PHULGENCE, M [AG.]: This matter was listed for assessment of damages on 21st May 2014. In addition, the Court had to consider an application for specific disclosure of documents and variation of the order of 3rd April 2014 filed by the defendant on 15th May 2014. This decision concerns this application filed by the defendant.

Chronology of Events

[2] The short facts are that the claimant applied for and was granted permission to construct a building in March 2010. In May 2010, the defendant wrote to the claimant indicating that it was placing an indefinite stay on the permission which had been granted in March 2010. On 25th July 2011, the claimant filed a fixed date claim form in which he claimed declarations and damages for the injury

and losses arising from the decision of the defendant to revoke the original order granting permission and the subsequent refusal by the defendant to properly treat with the claimant. It is necessary at this juncture to outline the events which occurred up to the point of the order of 3rd April 2014 in these proceedings. The fixed date claim form was served on the defendant on 28th July 2011. On 19th September 2011, the defendant acknowledged service of the claim. A consent order for assessment of the quantum of damages was made on 4th July 2013 in pursuance of the application for final judgment to be entered in default of defence which had been filed on 29th November 2012. On 19th December 2013, the claimant filed a notice of application with supporting affidavit for assessment of damages. The matter was listed for assessment before a judge on 13th February 2014 and was adjourned to a date to be fixed by the Registrar before the master. The assessment was then fixed for 3rd April 2014. The defendant up to 3rd April 2014 had filed no documents in response to the application for assessment.

[3] By order dated 3rd April 2014, the master ordered as follows:

> "(1) The parties to these proceedings are directed to meet with senior officials of the Ministry of Planning, the Director of Lands at the Attorney General's Chambers to consider for presentation at the next hearing of these proceedings, options for the satisfactory resolution of this case.
>
> "(2) The parties are directed to meet on 9th May at 10 a.m. at the chambers of the Attorney General or on a proximate and convenient date and time but in any event ahead of the next hearing. The respondent is charged with the obligation of briefing the additional parties ahead of the meeting such that the parties make the best use of the meeting time.
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> "(3) The respondent is to file within 14 days hereof its affidavit/s in response to the application for assessment and both parties are to file their submissions on assessment on or before the 9th May 2014. The Applicant is granted aright of reply to the affidavit/s of the respondent[s] to be filed on or before 9th May 2014.
>
> "(4) The hearing of the assessment is rescheduled to 21st May 2014."

In this order the Court expressed its dissatisfaction with the State's lack of readiness and that it had allowed the proceedings to linger without earnest efforts at resolution.

[4] The claimant filed its submissions in support of the assessment on 13th May 2013. On 15th May 2014, the defendant filed an application with supporting affidavit of Ms. Kinna Marrast-Victor seeking the following orders:

(1) Full disclosure of and to make available for inspection (i) the building contract and bill of quantities/scope of work prepared by the contractor or contracting company engaged by

the claimant for construction of his house; (ii) the loan agreement between the claimant and Republic Bank (Grenada) Ltd. setting out the total sums raised for the construction of the house; (iii) deeds of conveyance or lease regarding other property whether residential or commercial owned by the claimant or property in which he has a proprietary interest or property owned by any company which the claimant owns or has a proprietary interest in; and (iv) disclosure of any house/s or other residential property which belong to the claimant beneficially, whether wholly or jointly owned with another;

(2) That the documents and information requested be made available for inspection within 7 days of the Order;

(3) The Order dated 3rd April 2014 be varied having regard to the directions of this Order so far as the conduct of the assessment of damages hearing is concerned; and

(4) Costs to be costs in the assessment.

[5] The grounds of the application are inter alia that (1) specific disclosure of the documents requested is necessary for the proper conduct of the assessment of damages; (2) that the documents are central to the issues of compensation; (3) the documents are vital to the facts in issue relative to the claimant's alleged losses, particularly the questions of scope of compensation, remoteness of loss, unreasonable action or inaction and the like and the defendant fears that if they do not get the information and/or documents, the defendant will not be able to make representations on its behalf challenging the quantum of damages alleged as is its right to do in accordance with rule 16.3(3) of CPR 2000; (4) the duty of a party to make disclosure is continuous until proceedings are concluded by judgment and that in this case the claimant's judgment is incomplete as the quantum of his losses has not been determined by the court; (5) rules 1.1 and 1.2 require the court to deal with cases justly to ensure that the parties are on equal footing; (6) the documents or information sought to be disclosed are such that is not disclosed, this will prejudice the just disposal of the claim and the defendant will be unequally situated as it will not be able to use pertinent information in the exercise of its right to be heard at the assessment hearing.

[6] The affidavit in support of the application for disclosure at paragraph 8.2 thereof refers to specific paragraphs in the affidavit of the claimant filed in support of the assessment on 19th December 2013 to justify why it says that the contents of the documents requested to be disclosed are central to the issues of compensation. Specifically, they refer to paragraph 3 (c) which speaks to the cost to complete the remaining work to be done on the claimant's house and the value of the works which were completed at the time when the defendant issued the Stop Notice, paragraph 3 (e) where the claimant says that he and his family were forced to occupy the ground floor of the building which was in an unfinished state and the inconvenience that visited his family as a result, paragraph 5 where the claimant speaks to the exploration of two options, one of which involves demolition of the existing structure and paragraph 3 (g) where the claimant states that cost of construction of the house was $1,581,150.00. The defendant submitted that the defendant's right to properly participate in the assessment would be disabled and the assessment would proceed in default, which is not what the rules contemplated.

[7] The claimant filed an affidavit in response to the defendant's application for disclosure on 19th May 2014. The claimant strenuously opposes the application of the defendant and says that it is an abuse of the process of the court. The claimant says that his application and affidavit for assessment were filed since 19th December 2013 and was served on the defendant on 6th January 2014. He says that the first assessment was scheduled for 13th February 2014 before a Judge and on that date was re-scheduled to 3rd April 2014 before the master as had been stated in the Consent Order. The defendant has to date not filed one single affidavit in response to the affidavit filed in support of the assessment and has not filed any affidavit or submissions as ordered on 3rd April 2014. The defendant has not complied with the order.

[8] The claimant says further that by filing the application of 16th May 2014, the defendant is trying to obtain an extension of time to comply with the directions given by the master on 3rd April 2014. The defendant, the claimant says, has notwithstanding the fact that it has had the application since January 2014, and despite the fact that it was ordered to file affidavit evidence by 17th April 2014, not filed any documents in relation to the assessment and has instead waited until 16th May 2014 to make this application for disclosure.

[9] The claimant deposes that the application is simply intended to interrupt the hearing of the application for assessment of damages set to be heard on 21st May 2014 and to prevent the just and fair disposal of the matter before the court to his prejudice. He says if the defendant is allowed to succeed on this application it will result in increased losses to him both financially and otherwise.

[10] The claimant submits that the defendant has not justified why the documents requested are relevant to the assessment. In fact, he says some of the documents requested have been already disclosed or are not relevant. In particular, he cannot see how deeds of conveyance or leases of properties owned by him are relevant to the assessment. He says he has already disclosed the documents from the bank showing the amount taken from Republic Bank and also the cost of construction of the house is contained in the report of Mr. Carlyle Glean Jr.

[11] The claimant further submits that the defendant's less than diligent treatment of this matter has been evident throughout the proceedings and even prior to the filing of the claim. The claimant says he has tried on numerous occasions to engage the defendant by writing letters but got no responses. He deposes that it has been the practice that the defendant only gives the matter attention a few days before a hearing date. The claimant refers to the application for final judgment which was filed and to which the defendant did not file any response. The master on 3rd April 2014 ordered that the parties meet to have discussions with a view to coming to an amicable settlement. The claimant and attorneys representing the defendant were to meet and representatives from the defendant and Department of Lands and Surveys were to be present. The claimant says that the meeting did take place but they were only able to meet with the attorneys for the defendant and options for settlement of the claim. He says he remains open to a reasonable offer of settlement from the defendant.

[11] The defendant filed a notice of intention to be heard on assessment (Form 31) on 20th May 2014 in which it outlines that it wishes to cross-examine the claimant and Mr. Glean Jr, and gives a list of its witnesses and gives indication that it will make submissions to the court. It is to be noted that there was no part of the 3rd April 2014 order which required that the defendant file Form 31.

Analysis-Application for specific disclosure

[12] Rule 28.5(5) of the Civil Procedure Rules 2000 ("CPR") states:

> "An order for specific disclosure may require disclosure only of documents which are directly relevant to one or more matters in issue in the proceedings." (my emphasis)

Rule 28.6 states:

> "(1) When deciding whether to make an order for specific disclosure, the court must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs.
>
> "(2) The court must have regard to –
> (a) the likely benefits of specific disclosure;
> (b) the likely cost of specific disclosure; and
> (c) whether it is satisfied that the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order.
>
> "(3) If, having regard to paragraph (2)(c), the court would otherwise refuse to make an order for specific disclosure, it may nonetheless make such an order on terms that the party seeking the order must pay the other party's costs of such disclosure in any event.
>
> "(4) If the court makes an order under paragraph (3), it must assess the costs to be paid in accordance with rule 65.12.
>
> "(5) The party in whose favour such order for costs was made may apply to vary the amount of costs so assessed."

[13] The matter is at the stage of assessment and the defendant claims that it requires the documents which it has outlined so that it may be able to answer properly to the assessment. I have considered the requirements stated at sub-paragraph (2) of rule 28.6 and I am of the view that the defendant's application does not adequately address how disclosure of deeds of conveyance or leases regarding other property whether residential or commercial owned by the claimant or property in which he has a proprietary interest or property owned by any company which the claimant owns or has a proprietary interest in and disclosure of any house/s or other residential property which belong to the claimant beneficially, whether wholly or jointly owned with another, are relevant to the defendant being able to respond to the assessment proceedings. The defendant makes a bald statement that these documents go to matters of mitigation of loss and goes no further to show how. Counsel for the defendant further stated at the hearing when asked about the relevance of the last two listed documents, that the court would have to determine on the

rival evidence whether the claimant was reasonable or unreasonable as the claimant asserts that he was forced to accommodate himself in a particular way.

[14] Further, I do not see that the documents are necessary in order to dispose fairly of the assessment or to save costs as the information which the defendant uses as his basis for saying that these documents are necessary were in his possession from January 2014 when he would have been served with the claimant's affidavit in support of the assessment. It is not as if the matters were recently raised in the claimant's submissions. This matter has come on for hearing on two separate occasions and no such requests were ever made of the claimant. The claimant alluded to the fact that there was a meeting which was attended by the lawyers for the defendant and even then it does not appear that any request for these documents was made. I do not see that these two sets of documents are material to the assessment.

[15] As relates to the request for disclosure of (i) the building contract and bill of quantities/scope of work prepared by the contractor or contracting company engaged by the claimant for construction of his house; and (ii) the loan agreement between the claimant and Republic Bank (Grenada) Ltd. setting out the total sums raised for the construction of the house, although there is a report on the unfinished construction and the records from the bank showing the loan activity have been exhibited to the claimant's affidavit, I think that these two documents would be relevant to the assessment. These documents would further support or not the claims made by the claimant. The defendant as part of the grounds of the application says that the disclosure is needed to place the parties on an equal footing. However, I see that the defendant has placed themselves on an unequal footing by waiting until the hearing to file this application for specific disclosure.

[16] I would therefore order that the claimant disclose and make available for inspection the following documents only to the defendant within seven (7) days of the date of this order to wit:

(i) the building contract and bill of quantities/scope of work prepared by the contractor or contracting company engaged by the claimant for construction of his house; and

(ii) the loan agreement between the claimant and Republic Bank (Grenada) Ltd. setting out the total sums raised for the construction of the house.

Variation of order

[17] The defendant in its application has also asked this court to vary the order of the master dated 3rd April 2014. At the hearing, I asked the Solicitor General, Mr. Cajeton Hood to clarify this request for a variation of the order of 3rd April 2014 since the order had not been appealed and the time for the affidavit in response and submissions to be filed had long passed. Mr. Hood submitted that since the order of 3rd April did not follow the timelines set out in rule 16.2 as amended, then it was incorrect and so should be corrected. Mr. Hood went on to say that the whole purpose of the amendment was to allow the defendant to participate in the assessment and that he did not think that the master intended to make directions which were inconsistent with rule 16.2. While that is true, with the greatest respect to counsel, I fail to follow this argument as the order of 3rd April 2014 certainly did not take away the right of the defendant to participate in the assessment. Counsel did not seek to appeal the order that he says is incorrect and so it remains a valid order.

[18] The master gave directions which she thought were fit for this case given the circumstances. At the time the matter came before the master, the defendant had not filed any evidence nor had any party filed submissions and so the order of 3rd April 2014 was made with a view to trying to move the matter along to the assessment hearing. The master could certainly have made such an order having regard to the particular facts of the case. The fact that the defendant thinks that the master's order was wrong or inconsistent with the rules is immaterial as it cannot just ignore an order of the court. The defendant had open to him other options which he chose not to explore and at this juncture applies to vary an order which if acceded to would give him the benefit of an extension of time without having satisfied the court that it met the criteria for the grant of such an extension as outlined in the case of John Cecil Rose v Anne Marie Rose.[1] In this regard, I fully support the submissions of the claimant on this point. I therefore refuse to vary the order of 3rd April 2014.

[1] Saint Lucia High Court Civil Appeal No. SLUHCVAP2003/0019 (delivered 22nd September 2003, unreported)

Conclusion

[19] I make the following observations in relation to this matter. Parties in a matter before the court cannot have blatant disregard for orders of the court. Whether they are in agreement or not with the court's order, a party has an obligation to obey same. If he/she is dissatisfied or thinks the order wrong, that order can be appealed.

Order

[20] The order I make is as follows:

1. The claimant is to disclose and make available for inspection the following documents only to the defendant within seven (7) days of the date of this order to wit:
   (i) the building contract and bill of quantities/scope of work prepared by the contractor or contracting company engaged by the claimant for construction of his house; and
   (ii) the loan agreement between the claimant and Republic Bank (Grenada) Ltd. setting out the total sums raised for the construction of the house.
2. The part of the application requesting a variation of the order of 3rd April 2014 is refused.
3. The defendant is to pay costs of $750.00 to the claimant occasioned by the fact that the filing of the application has resulted in the further adjournment of the assessment and also on account of the application being made just 4 working days before the assessment hearing.
4. The assessment of damages has already been adjourned to 18th June 2014.

Kimberly Cenac-Phulgence
Master [Ag.]