ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2006/0234

BETWEEN

EVERTON CORNELIUS
Trading as VEC Construction Company

Claimant/Respondent

And

ALLAN STEVENS
And
CHRISTINE STEVENS

Defendants/Applicants

Appearance:
Mrs. Stacey Richards-Anjo for the Applicants
Ms. Jasmine Wade for the Respondent

……………………………………..
2008: November 19
December 5
……………………………………..

DECISION

[1] **Blenman J:** Mr. Allan Stevens and Mrs. Christine Stevens (the Stevens) apply to the Court for an order that Mr. R. Everon Zachariah be deemed an expert witness and that he be allowed to submit a report to the Court on his opinion in relation to the nature and value of the repairs already completed on their property, built on Registration Section: South Central; Block 15 2287 B; Parcel 85. The report should also address the nature and costs of repairs and corrective work to be done on their property. They also seek leave to file an amended counterclaim.

[2] The Stevens state that Mr. Zachariah is a professional in the field of structural engineering and will be able to assist the Court in resolving the several matters before it. They state that they have paid all monies billed by Mr. Cornelius in this matter. Further, they are counterclaiming that certain works which were done by him on the house, were improperly done and some were not done at all. They also say that they need an expert to value the repairs they have already done and to give an opinion on what has to be done to make the negligent work right. They will also need an estimate of what it will cost to remedy the defects. Accordingly, they ask the Court to make an order to allow an expert to give his opinion to the Court and also to allow the amendment of their counterclaim to include the matters which will be disclosed in the expert report. Mr. Cornelius opposes the application.

[3] The grounds for the application are as follows:

(1) They have counterclaimed that Mr. Everton Cornelius has failed to complete the work on their house and that he was negligent in the performance of his work under contract.

(2) They have had to make certain repairs to the property; in addition other repairs and corrective works had to be done and must be valued by an expert so that their counterclaim can be fully presented to the Court. Since the filing of the counterclaim, they have expended monies in correcting work, which they allege was negligently done by him.

[4] **Issues**

The issues that arise for the Court to resolve are as follows:

(a) Whether the Court should grant leave and order at the Pre-Trial Review stage, that Mr. Zachariah be deemed an expert, and to allow him to provide an expert report;

(b) Whether at the Pre-Trial Review stage, the Court should grant the Stevens leave to amend their counterclaim.

[5] **Background**

By a claim form, together with a statement of claim, Mr. Everton Cornelius, Trading as VEC Construction Company, filed a claim against the Stevens claiming that they had breached a construction contract. He says that he agreed to construct a house for the Stevens at a cost of $974,899.00 in accordance with specified building plans and engineering specifications. During the construction phase, they requested extra work at a cost of $245,233.00. In addition, he says that they requested him to construct a second building at a cost of $60,254.00 and he complied. He further states that the Stevens have failed to pay an outstanding sum of $305,487.00, even though they have made no allegations that the buildings were not properly constructed. Mr. Cornelius has annexed the construction costs and plans to his statement of claim.

[6] On 31st May 2006, the Stevens filed an Acknowledgment of Service and indicated their intention to contest the claim.

[7] On 2nd August 2006, they filed an application and sought an extension of time to file their defence, indicating that they were seeking a valuation of the property and the cost of the additional work that Mr. Cornelius did.

[8] On 22nd September 2006, the Court granted the Stevens leave to file and serve defence in 7 days. On 29th September 2006, they filed a defence and counterclaim in which they indicated that they were dissatisfied with the quality of work. In any event, the construction of the house is incomplete and they had to expend monies to complete it. They deny owing Mr. Cornelius any money and state that they have paid him EC $1,066,035.00 for the construction of their house. They counterclaimed against him for damages on the basis of his breach of contract and alleged that his workmanship was poor and that he used poor quality of materials. They further state that he and his servants carried out negligent and defective works. Finally, that the building is incomplete and they had to incur additional costs to remedy those defects and complete the construction. To their defence and counterclaim were annexed a number of plans, invoices and estimates. They indicated in their defence and counterclaim that they were seeking to obtain an expert report.

[9] On 4th January 2007, Mr. Cornelius filed a defence to the counterclaim, in which he denied that he was negligent or that the construction work he carried out was of a poor standard or incomplete.

[10] The Stevens filed a reply to the counterclaim on the 5th February 2007.

[11] On the 24th April 2008, the matter came on for case management and the Court gave directions for disclosure and the filing of witness statements. It was adjourned in order for Pre-Trial Review to be held on the 3rd October 2008 and a trial window set for November 2008.

[12] In the intervening period, the Stevens filed the present application and the Court office sent the application to be dealt with by the learned Master; the latter ruled that it should be dealt with at the Pre-Trial Review hearing. The application came up at the Pre-Trial Review and Mr. Cornelius opposed the Court's granting of leave.

[13] **Ms. Jasmine Wade's submissions**

Expert Report

Learned Counsel Ms. Wade in opposing the application, stated that this action was commenced on the 10th May 2006 by the service on the defendant of a claim form together with a statement of claim. The Stevens only filed a defence and a counterclaim on 29th September 2006. In their defence, they alleged that the building was incomplete and counterclaimed that Mr. Cornelius had carried out defective work using inferior, inadequate and unsuitable materials and had failed to complete the agreed upon works. The Stevens also pleaded that they had commissioned a survey and engineering report on the state and condition of the building and were awaiting receipt of this report to make application to the Court to deem the report an expert report and amend the particulars of the claim, where necessary. The particulars of the alleged defective work were fully itemized in the counterclaim.

[14] On the 21st April 2008, an order was made on case management, a review of the same shows that the Stevens were granted permission to call three witnesses. No application was made prior to by them with respect to expert witness and/or amendment of their counterclaim, notwithstanding more than 1 ½ years had elapsed since the filing of the defence and counterclaim. Ms. Wade submitted that there is nothing in the Rules which prevents the Stevens from calling Mr. Zachariah as one of their three witnesses thereby affording Mr. Cornelius the opportunity to cross examine him and explore the basis upon which he arrived at his conclusion. Any report he has compiled will be appended to his witness statement thereby giving Mr. Cornelius ample opportunity to examine it. This ought to have been done prior to July 31st 2008 and he would have been confined to the matters set out in the defence and counterclaim.

[15] Further, learned Counsel Ms. Wade said that it should be borne in mind that Mr. Cornelius is in fact an engineer and that regard ought to be paid to the matters pleaded in paragraph (7) of the Stevens' defence. Mr. Zachariah is not proposed to be called as an independent witness of fact, but as a witness for and on behalf of the Stevens to bolster their claim and for the purpose of inflating their special damages as pleaded. There are no adequate reasons given by the Stevens as to date and time of the examination and why if this examination was allegedly conducted prior to September 2006, it took almost two years for a report to be given. In other words, why up to case management the Stevens had failed to comply with CPR 2000 Part 10.5(6) which requires the annexation to the defence, any document which is considered necessary to the defence? The manifest object of this rule is to put Mr. Cornelius on notice as to what the Stevens' case is and thereby afford Mr. Cornelius an opportunity to challenge the same.

[16] Learned Counsel Ms. Wade stated that CPR 2000 Part 10.7 (1) (2) and (3) requires the Stevens after case management to apply for permission, which permission shall not be granted unless they satisfy the Court that there has been a significant change in circumstances which became known after the date of the case management conference. Ms. Wade states that the affidavit of the Stevens singularly fails to satisfy this requirement in that it contains no evidence upon which the Court could validly exercise its discretion.

[17] Further, Ms. Wade stated, an application for permission to call independent expert evidence must be made and given at a case management conference. A case management conference took place in April 2008. No application in a proper form was made by the Stevens. It is therefore necessary for valid and cogent reason as to why this was not done.

[18] **Amendment to counterclaim**

Learned Counsel Ms. Wade stated that an application to amend the defence and counterclaim is governed by CPR 2000 Part 20.1(3) which emphatically states that after case management the Court may not give permission to change a statement of case unless, as in the case at bar, the Stevens can satisfy the Court that change is necessary because of some change in circumstances which became known after the date of the case management conference. The Stevens' affidavit does not disclose any evidence that touched on this requirement. Ms. Wade states that there is no material before the Court on which it can validly exercise its discretion.

[19] In any event, even if the Court is minded to deal with the Stevens' application, given their non-compliance with the rules, they are required to make application for relief from sanctions under CPR 2000 Part 26.7 and 26.8. No such application is before the Court: **Kenton Collison St**. **Bernard v Attorney General of Grenada et al Civil Case No. 0084 of 1999.** See paragraphs 8,9,10 and 11 of the judgment.

[20] Finally, Ms. Wade urged the Court to dismiss the Stevens' application together with cost.

[21] **Mrs. Stacey Richards-Anjo's submissions**

Learned Counsel Mrs. Richards-Anjo said that she conceded at the outset that in the absence of the report of the expert, there are no circumstances arising which will give the Court latitude to allow an amendment of the Stevens' pleadings. This limb of the application will be withdrawn with the leave of the Court.

[22] Learned Counsel Mrs. Richards-Anjo said that the order of the Master on the 24th April 2008 was made against the backdrop of the previous efforts of Counsel for Mr. Cornelius to have the property examined with a view to a report being produced. By letter dated the 16th October 2006, Ms. Wade wrote to Counsel for the Stevens requesting admission to the premises for the purpose of inspection to see what if any defects were un-remedied. By letter dated 18th October 2006, Counsel for the Stevens replied to Ms. Wade advising that there was no objection to the site visit. However, learned Counsel Mrs. Richards-Anjo said that Mr. Cornelius did not pursue the issue after the agreement to the site visit. Subsequently, the matter came up for case management on the 24th April 2008 that being the second case management conference. The events here were noted by the Court, and as in the usual course, the order on case management included directions for further applications to be filed on or before the 19th September 2008.

[23] The application before the Court was filed on the 17th June 2008, albeit four days after the date ordered for settlement of agreed documents but well before the date set for filing of witness statements and the final date for further applications. At paragraph 7 of the applicants' defence, they claim that the building was not complete at the time of the filing of the claim and further they have had to expend additional funds to try to complete the house. Additionally, at paragraph 8 of the counterclaim, particulars of negligence and breach as alleged against Mr. Cornelius are detailed. There is, as between the parties, clearly no agreement on the nature of the additional work undertaken beyond the scope of the original estimate. In fact, Mr. Cornelius denied in toto the averment of the applicant that there are defects in relation to the construction of the home.

[24] Learned Counsel Mrs. Richards-Anjo stated that no opinion evidence, either as a report or witness can be called in the Court without leave from the Court to do so under Part 32 of CPR 2000. Opinion evidence, as a general rule of evidence is excluded. Accordingly, the witness can testify to facts but not to his opinion. The allowance of expert evidence is an exception to this rule. The statement of law by Counsel for Mr. Cornelius is incorrect when it is said that "there is nothing in the rules [CPR] or procedural law which prevents the defendants from calling Mr. Zachariah as one of their expert witnesses thereby affording

the claimant the opportunity to cross examine him and explore the basis upon which he arrived at his conclusion". Expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly. Further, any expert witness is the Court's expert. Written questions may be put to the expert by Mr. Cornelius generally to clarify the report or in relation to any other matter where the Court permits or any other party agrees. The answers will be treated as part of the expert report. The expert once called as a witness will be subject to cross examination by Mr. Cornelius' Counsel.

[25] Mrs. Richards-Anjo conceded that CPR 2000 Part 11.3(2) instructs that the Stevens in this case may be required to pay costs, since this application is in the normal course a case management application.

[26] Learned Counsel Mrs. Richards-Anjo stated that the issue of a quantum meruit assessment is relevant in light of the pleadings. In fact, Mr. Cornelius claims damages for work done and materials supplied beyond a liquidated amount of EC $305,487.00. It is obvious having regard to the correspondence disclosed in the affidavit of Sharon Joseph that the appointment of an expert was contemplated by Mr. Cornelius' Counsel.

[27] In so far as the timeliness of the application is concerned, Mrs. Richards-Anjo argued that the applicant has been filed at a case management conference, albeit the matter has not yet been set down for pre-trial review. The application has been made within a reasonable time to allow for a trial date in November 2008. The defence of the applicants filed on the 29th September 2006, at paragraph 7 in this matter is clear that they experienced tremendous difficulty sourcing a possible expert in this matter hence the reason for the delay. The affidavit of Sharon Joseph further highlights these difficulties.

[28] The overriding objective of CPR 2000 as outlined in Rule 1.1 seeks to ensure that cases are dealt with justly. The expert evidence must be reasonably required to resolve the proceedings justly. In the normal course, a matter involving personal injuries and their likely effect ought not to be decided without medical practitioners. So too a case involving allegations of work done in a construction matter (not valued) and not paid for by the home

owner, coupled with counterclaims of defective work ought not be decided in the absence of an expert in the relevant field(s) who is available and willing to assist the Court.

[29] **Court's analysis and conclusions**

The Court has given deliberate consideration to the very helpful submissions of both learned Counsel. The Court has also perused the application, together with the affidavits in support and paid regard to the pleadings.

[30] It is known that the overriding objective of the rules requires the Court to deal with cases justly.

[31] Part 32.2 of the CPR 2000 provides that expert evidence must be restricted to what is reasonably required to resolve the proceedings justly. Part 32.2(1) of the CPR 2000 states that it is the duty of an expert witness to help the Court impartially on the matters relevant to his or her expertise. Part 32.3(2) states that this duty overrides any obligation to the person by whom he or she is paid. It is clear that the expert report should be so deemed and admitted by the Court, only if the Court is of the view that it is reasonably required to resolve the proceedings fairly. The CPR 2000 clearly anticipates that the expect report should not be partisan and that the overriding duty is to the Court. Lord Wilberforce, commenting on the expert evidence in **Whitehouse v Jordan [1981] 1 WLR 246 at 256** said:

> "It is necessary that expert evidence presented to the Court should be, and should be seen to be, the independent product of the expert, uninfluenced as to form or content by the exigencies of the litigation".

[32] There is no doubt that the Court can appoint a person to provide expert report even though that person's services are paid for by one of the parties providing the Court is satisfied that the evidence is not likely to be partisan.

[33] There are several safeguards which seek to ensure that the expert report is objective. Indeed, Part 32.14(2) and 32.14(3) of CPR 2000 state as follows:

"(2) At the end of an expert witness' report there must be a statement that the expert witness:

(a) Understands his or her duty to the Court as set out in rules 32.3 and 32.4;

(b) Has complied with that duty;

(c) Has included in the report all matters within the expert witness' knowledge and area of expertise relevant to the issue on which the expert evidence is given;

(d) Has given details in the report of any matter which to his or her knowledge might affect the validity of the report.

(3) There must also be attached to an expert witness' report copies of:

(a) All written instructions given to the expert witness;

(b) Any supplemental instructions given to the expert witness since the original instructions were given; and

(c) A note of any oral instruction given to the expert witness; and the expert must certify that no other instruction that those disclosed have been received by him or her from the party instructing the expert, the party's legal practitioner or any other person acting on behalf of the party.

Indeed, these provisions underscore the need for the expert to assist the Court and not to seek to assist the party who has instructed the witness.

[34] In determining the issue of the expert report, it was worth noting that as early as on the 29th September, 2006, in their counterclaim, the Stevens indicated that they have commissioned a survey and engineer report into the state and condition of the house which they had not received to date. They indicated that upon the receipt of the report, they would have made an application to the Court to deem the report an expert report and to amend the particulars of claim. It therefore was clearly stated by the Stevens that they required an expert report in order for the Court to be able to resolve the issues properly.

[35] Ms. Wade correctly stated that the application to call expert evidence usually should be made and given at a case management conference. This is buttressed by Part 32.6(1) of CPR 2000 states that a party may not call an expert witness or put in the report of an

expert witness without the Court's permission. Part 32.6 of CPR 2000 states that as a general rule the Court's permission is to be given at a case management conference. There is nothing on the record to show that any such application was made.

[36] Further, Part 32.6(3)-(6) of CPR 2000 state:

(3) When a party applies for permission under this rule:

(a) That party must name the expert witness and identify the nature of his or her expertise; and

(b) Any permission granted shall be in relation to that expert witness only.

(4) The oral or written expert witness' evidence may not be called or put in unless the party wishing to call or put in that evidence has served a report of the evidence which the expert witness intends to give.

(5) The Court must direct by what date the report must be served.

(6) The Court may direct that part only of an expert witness' report be disclosed.

[37] The Court is minded to adopt a flexible approach to the issue as to what further period other than at case management an application to appoint an expert witness may be entertained, the Stevens have provided persuasive arguments to move the Court to grant them leave to produce an expert report, at this stage. They have done so in their grounds of the application and more particularly, in the affidavits filed in support of the application. Particularly, the affidavit of Ms. Sharon Joseph, which states at paragraphs 2 - 6 as follows:

(2) "On the 4th July 2006, Richards and Company instructed Wayne Martin, a structural engineer, to prepare a valuation report in relation to the property of the Applicants, which in the normal course would cite defects which were of the nature to affect the value of the property. I am advised by my principal Mrs. Stacey A. Richards-Anjo and verily believe that in a telephone conversation with Mr. Martin, he declined to include any reference to defects in his report as he had a good working relationship with the Respondent.

(3) By letter dated the 22nd September, 2006, we wrote to Addison Workman asking that a valuation be done and specifically asking that the report should include an analysis of any structural problems and details of any work which needs to be done to complete the house. No written response was ever received from Mr. Workman. I am advised by my principal Stacy Richards-Anjo and verily believe, that in a telephone conversation with Mr. Workman, he disclosed that he did not want to do any work which involved a Court appearance at that time.

(4) Thereafter, on the 29th September, 2008, we proceeded to file a defence on behalf of the Applicants, after the order of the Court that the Applicants be allowed to do so, the time for filing have passed.

(5) By letter dated the 16th October, 2006, Dane Hamilton and Associates on behalf of the Respondent requested that a site be allowed by an engineer. After speaking with the Applicants, we replied on the 18th October, 2006, that the site visit was approved and also asked that a time be arranged for the visit. We have had no further communication from the Respondent.

(6) On the 6th May, 2008, we wrote to Everon Zachariah, a structural engineer, asking that a report be done in relation to the property of the Applicants. On the 22nd May 2008, we followed up with a telephone call and an email, not having received a phone call or any other communication from Mr. Zachariah. On the 18th June 2008, we still had seen no movement on the matter so we again contacted Mr. Zachariah and he replied to our Chambers by email suggesting dates for a site visit, but referencing the wrong matter. On the 19th June 2008, Mr. Zachariah confirmed that he would be available for a site visit in relation to this matter.

[38] There is information before the Court which shows that the Stevens were prevented from applying at the case management conference for the Court to appoint an expert witness to furnish the report. They have also indicated the difficulty they have experienced in

obtaining expert evidence. The justice of the case and the overriding objectives of the rules require that the Court deals with matters fairly.

[39] The Court is mindful of the fact that late applications may be granted in order to allow expert evidence to be adduced, if the party seeking such permissions can demonstrate good reason. There are cogent reasons provided by the Stevens for their late application. This is particularly clear from Ms. Sharon Joseph's affidavit on the 17th July, 2008.

[40] As stated earlier, it was after the case management had been completed and directions were given for the Pre Trial Review hearing that they filed an application to have Mr. Zachariah be deemed an expert witness. At case management, the Court determines the issues to be determined and whether there is the need for any expert evidence. There are very good reasons for this. However, based on a perusal of the application and the affidavits in support, the Court's respectful view is that the Stevens have met the threshold required to establish that there are good reasons for this late application. The reasons given have not been challenged.

[41] Once a person is appointed as an expert witness, he becomes the Court's expert. The expert's duty is to assist the Court in matters within his expertise. This duty overrides the duty or any obligation to the party who has instructed him. The expert evidence is usually admissible in order to enable the judge to reach a properly informed decision on a technical matter. There is no doubt that there are technical issues that arise in the case at bar, not least of which is whether the construction of the house was properly carried out; whether there are and were defects and the costs of remedying those defects.

[42] It seems to the Court therefore, and with respect, there is little merit in Ms. Wade's argument that it will not be just at this stage, for the Court to permit Mr. Zachariah to be deemed an expert witness, since the real purpose is for him to adduce evidence which is likely to increase the Stevens' claim to damages. Equally, Ms. Wade is not correct in asserting that there is noting to prevent the Stevens from calling Mr. Zachariah as their witness. However, of concern to the Court is the fact that if the Court is so minded to grant

leave, there must be an indication as to whether or not Mr. Zachariah has any material or significant conflict of interest. This should be disclosed in the application stage; see **Toth v Jarman [2006] EWCA Civ 1028**.

[43] As stated earlier, expert witnesses should be see to be independent; see **The Ikarian Reefer [1993] 2 Lloyd's Rep 68 at 81**. The Court is cognisant of the fact that the expert is known either personally or professionally by the party who proposes to use his evidence does not, by itself, render the evidence inadmissible. On the face of the affidavits therefore, the Court has no basis for concluding, without more, that Mr. Zachariah is likely to be partisan. The Court does not accept Ms. Wade's view that the Stevens will utilise Mr. Zachariah in order to inflate their damages claimed. Part 32.6(1) of CPR 2000 clearly states that no party may call an expert or put in evidence an expert's report without the Court's permission. Learned Counsel Mrs. Richards-Anjo has correctly stated the principles. Also, at case management, the Court determines the issues on which the expert evidence will be admitted. It is clear therefore that unless the Court grants leave to the Stevens, at this stage to put in an expert report, they will be debarred from so doing. I also accept the submissions of learned Counsel Mrs. Richards-Anjo that if the Court were minded to grant leave to have Mr. Zachariah provide the Court with an expert report, the issue of costs will have to be determined and that the Stevens should bear the costs.

[44] The Court's discretion is exercised positively, to enable the evidence to be admitted only if it is likely to be of real assistance to the determination of the issues, and that it is adduced in the most effective way consistent with the overriding objective. See **ES v Chesterfield and North Derbyshire Royal Hospital NHS Trust** ibid. Annexed to their affidavit in support of the application, the Stevens has provided the Court with the identity of the proposed expert and a copy of his curriculum vitae, which identifies the field of his proposed expertise namely structural engineering.

[45] Further, taking into account the totality of circumstances including the overriding objective to deal with cases justly, the Court is of the view that leave should be granted to have Mr. Zachariah provide an expert report to the Court.

[46] In coming to the above conclusion, the Civil Court Practice 2007 is persuasive. It states at CPR 35.1 [2A] as follows:

> "**Clinical negligence claim where defendant inevitably will be giving expert evidence.** In a clinical negligence case where the defendant clinicians would inevitably give evidence as to what they regarded to be accepted practice in order to justify their actions and such evidence was likely to be taken into account by the judge in deciding the case, it may be appropriate (having regard to the complexity of the case, proportionality and the interests of justice) to permit the claimant to call two medical experts: **ES v Chesterfield and North Derbyshire Royal Hospital NHS Trust [2003] EWCA Civ 1284**."

[47] I come now to address the form of the expert report. Part 32.7 of the CPR 2000 provides as follows:

> (1) Expert evidence is to be given in a written report unless the Court directs otherwise.
>
> (2) This rule is subject to any enactment restricting the use of "hearsay evidence".

[48] To reiterate, the Court, having reviewed the counterclaim, is satisfied that the provision of the report of expert witness is reasonably required in order to assist the Court to determine the proceedings justly. It is clear that the Court would need to be provided with evidence that addresses the issue of the alleged breaches of the contract and or negligence. Also, the Court would need to hear expert evidence as to the costs of the remedial works that were allegedly undertaken and the costs of the works that are incomplete and which the Stevens need to prove are likely to result in them incurring further loss.

[49] The Court is of the view that the Stevens should bear the costs of the expert report.

[50] **Amendment of counterclaim**

There is no need for the Court to address that issue since the Stevens are no longer pursuing this limb of their application.

[51] **Costs**

Costs are always in the discretion of the Court. The discretion must be exercised judicially and objectively. Part 1.2 of CPR 2000 directs the Court to act objectively when it seeks to exercise discretion. Accordingly, the Court will usually award costs to the successful party. See Part 64.5 – Part 64.6 of CPR 2000. Equally, there is discretion for a judge to make an order other than in accordance with the general rule that the unsuccessful party must pay the costs of the proceedings. The Court is of the view that this is an appropriate case in which to award the costs of the application to Mr. Cornelius due primarily to the application being brought so late in the day. There are other reasons that justify departing from the general rule, namely that the application has had the effect of delaying the Pre-Trial Review hearing and ultimately the trial of the matter. In fact, the Pre-Trial Review hearing will now be set some months later than anticipated. The costs of the application I will fix at $750.00, there being no objection by learned Counsel Mrs. Richards-Anjo.

[52] In passing, I am of the respectful view that Counsel was correct not to object to a costs order, even though the order was made before the trial, since in my respectful view the application will add to the cost of the litigation.

[53] **Conclusion**

In view of the foregoing, the Court orders as follows:

(a) Mr. R. Everon Zachariah is deemed to be an expert witness. Mr. Zachariah is to provide a written expert report on the nature and value of the repairs allegedly completed on the Stevens' house and the nature and cost of the repairs and corrective works required to be done on the house.

(b) The expert report should be addressed to the Court and submitted no later than 10 days of this order.

(c) A copy of the expert report should also be served on the parties to the matter no later than 10 days of this order.

(d) The costs associated with the provision of the expert report are to be borne by Mr. Alan Stevens and Ms. Christine Stevens jointly.

(e) The costs in the sum of $750.00 to be paid by Mr. Alan Stevens and Mrs. Christine Stevens to Mr. Everton Cornelius.

(f) The matter is adjourned 9:00 am on the 16th January, 2009 for Pre- Trial Review.

[54] I thank both learned Counsel for their assistance.

Louise Esther Blenman
High Court Judge