

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV2007/0407

BETWEEN:

JACQUELINE CHARLES
(Legal Guardian of Joshua Cecil Thorne)

Claimant

AND

HERBERT J. PREUDHOMME
GEOFFREY U.L. PREUDHOMME

Defendants

Appearances:

Mr. Ian Sandy and Mr. Dwight Horsford for the Claimant
Mr. Reynold Benjamin for the Defendants

2009: April 28th
July 21st

JUDGMENT

IN CHAMBERS

[1] **MICHEL, J. (Ag.):** By Notice of Application filed on 27th January 2009 the Defendants sought the following orders:

1. Pursuant to CPR 34.2 the Claimant be ordered to give to the Defendants the information requested in the Defendants' Attorney's letter of 29th January 2008 about the matter in dispute in the proceedings, to wit, the mental capacity of Joshua Thorne during the period stated in the said letter to effect transactions between the Claimant and the said Joshua Thorne relating to the transfer of land, money, chattels or any property whatsoever.

2. The Defendants be granted permission to issue and serve a Witness Summons pursuant to CPR 33.3 directed to the Manager, Royal Bank of Trinidad & Tobago (Grenada) Limited, St. Georges, Grenada, to attend High Court #3 on Monday 23rd [February] 2009 and to produce to the Court the bank's record of transactions between Joshua Thorne and Jacqueline Charles and specifically any transaction or transactions of which the said Jacqueline Charles is or was the beneficiary and to give such oral evidence as is necessary.

- [2] The application was supported by an Affidavit of Herbert J. Preudhomme filed on the said 27th January, with accompanying exhibits, and was opposed by the Claimant, with an Affidavit of Jacqueline Charles filed on 19th February 2009 in opposition to the application.

- [3] The application was scheduled to be heard on 20th February 2009, with the trial of the case scheduled for 23rd February 2009. On 20th February the hearing of the application was adjourned to 27th March and the trial date of 23rd February was vacated. On 27th March the matter was further adjourned to 24th April, which date was later advanced to 21st April and then rescheduled - along with all other Chamber matters due to have been heard on 21st April - to 22nd April. On 22nd April the matter was adjourned to 28th April.

- [4] On 28th April 2009 Counsel for the Defendants informed the Court that, following from a discussion with Counsel on behalf of Royal Bank of Trinidad & Tobago (Grenada) Limited, paragraph 2 of the Notice of Application is discontinued. Submissions were then made by Counsel on behalf of the Claimant and on behalf of the Defendants on paragraph 1 of the Notice of Application.

- [5] In his submission, Learned Counsel for the Defendants contended that the Defendants had, by their Attorney at Law, written to the Claimant, through her Attorneys at Law, by letter dated 29th January 2008, requesting information as to whether there was any transaction between the Claimant, Jacqueline Charles, and Joshua Thorne relating to the transfer of land, money, chattels or any property whatsoever from Joshua Thorne to Jacqueline Charles between the period 1st May 2001 and 31st December 2004 and, if there was such a transaction or transactions, to disclose the nature of the transaction(s), the date(s) and institution(s) involved. It was contended further that on 15th January 2009,

when the letter of 29th January 2008 was not responded to, a further letter was written to the Claimant's Attorneys reminding them of the letter of 29th January 2008 and that it had not been responded to. Then on 26th January 2009 the Claimant's Attorneys responded to the letter of 15th January 2009 indicating that they do not see how the information requested is relevant to the matters in dispute in these proceedings and how this information is necessary in order to dispose fairly of the claim and that they will not advise their client to provide the information requested unless the court orders her to do so. Learned Counsel for the Defendants submits that the information requested is relevant to the matter in dispute between the parties relative to the mental capacity of Mr. Joshua Thorne during the period when the deed of gift to the Defendants was executed. Counsel submits that the requirements of Rules 34.1 and 34.2 have been satisfied and the order requested should be granted by the Court.

[6] In reply, Learned Counsel for the Claimant contended that the Defendants' application is misconceived; there is no sufficient evidential basis as contained in the affidavit of Mr. Preudhomme which the Court can properly act upon to make the order sought; Part 34 of the CPR is aimed at obtaining information about any matter in dispute in the proceedings and the parties here are not ad idem as to what is in dispute in these proceedings. Learned Counsel submitted that, the Defendants not having satisfied the evidential basis showing that the order which they sought is necessary to dispose fairly of the claim, the application should be dismissed.

[7] Part 34 of the CPR, according to its terms, enables a party to proceedings before the Court to obtain from any other party information about any matter which is in dispute in the proceedings. In order to obtain that information Rule 34.1 (2) requires the party seeking the information to serve a request on the other party identifying the information sought. Rule 34.2 (1) then provides that if the party from whom the information is requested does not give it within a reasonable time then the requesting party may apply for an order compelling the other party to do so. What therefore a party applying for an order under Part 34 has to establish is that the information he is requesting is relevant to any matter in dispute in the proceedings, that he did serve a request on the other party to provide the

information, which the other party did not provide within a reasonable time, and that he has made application to the Court to compel the other party to provide the information.

[8] It is not disputed here that the Defendants did make a request to the Claimant for information as to whether there was any transaction between the Claimant, Jacqueline Charles, and Joshua Thorne relating to the transfer of land, money, chattels or any property whatsoever from Joshua Thorne to Jacqueline Charles between the period 1st May 2001 and 31st December 2004; that the Claimant did not provide the information requested within a reasonable time or at all; and that the Defendants have made application to the Court to compel the Claimant to provide the information. What is disputed is whether the information requested is relevant to any matter in dispute in the proceedings.

[9] As to the relevance of the information requested to the matters in dispute between the parties, it appears palpably clear that it is relevant. The Claimant has averred in her statement of claim that a Deed of Gift executed by Joshua Thorne in favour of the Defendants ought to be set aside because, by virtue of medical reports which she puts in evidence in the case, Joshua Thorne was from May 2001 to August 2005 suffering from dementia such as to have rendered him incapable of transferring his property. The Defendants in their defence have denied this and have averred that in the same period of incapacity of Joshua Thorne, as alleged by the Claimant, transactions were done by him in favour of the Claimant, Jacqueline Charles. The information which the Defendants seek from the Claimant is certainly relevant therefore to a matter in dispute between the parties to these proceedings.

[10] These preliminary questions having been determined, it is then for the Court to be satisfied that the making of an order is necessary in order to dispose fairly of the claim or to save costs, having regard to (a) the likely benefit which will result if the information is given; (b) the likely cost of giving it; and (c) whether the financial resources of the Claimant are likely to be sufficient to enable her to comply with the order.

[11] This Court is satisfied that the making of the order requested by the Defendants is necessary to dispose fairly of the claim in this case, because the Court would need to

know - in considering an allegation by the Claimant of incapacity of Mr. Thorne arising from dementia – whether the Claimant is estopped from making this allegation having regard to her own conduct in accepting gifts from Mr. Thorne during his alleged incapacity, if the information provided revealed that she had done so. The likely benefit which will result if the information is given is evident from the previous statement made, the cost of giving it is likely to be insignificant, and the financial resources of the Claimant are likely to be sufficient to enable her to comply with the order, since the cost of compliance is likely to be insignificant.

[12] In the circumstances, it is hereby ordered that the Claimant shall provide to the Defendants within 14 days of the date of this order, information as to whether there were any transactions between the Claimant, Jacqueline Charles, and Joshua Thorne relating to the transfer of land, money, chattels or any property whatsoever from Joshua Thorne to the Claimant, Jacqueline Charles, between the period 1st May 2001 and 31st December 2004 and, if there were such transactions, the Claimant shall disclose to the Defendants the nature of the transactions, giving particulars of the nature, date and institutions involved.

[13] Trial window set for November 2009 on a date to be notified by the Registrar.



Mario Michel
High Court Judge (Ag.)