

SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV 2005/0916

BETWEEN

DEVELOPMENT CONTROL AUTHORITY

Claimant

AND

(1) DARNLEY ISHMAEL

(2) MOSES ISHMAEL

DEFENDANT

Appearances:

Ms. Bernella Charlemagne for the Claimant

Mr. Dexter Theodore and Mrs. C. Hinkson Ouhla for the Defendants

.....
2009: JUNE 10, 17
JULY 31
.....

JUDGMENT

- [1] The Claimant filed a fixed date claim seeking inter alia the demolition of certain building works undertaken by the defendants without planning permission.
- [2] During the course of the litigation the parties had discussions. They agreed a consent order in the following terms:

- (1) That the Defendants (whether by themselves, their servants, Agents or however else) do hereby undertake to refrain from further construction on Block 1245B and Parcel 669 except in accordance with plans approved by the Claimant*

- (2) That the Defendants provide for a minimum of nine (9) functional parking spaces to service Block 1254 B and Parcel 669.*

- (3) That the Defendants submit an application to Claimant for approval-in-principle on or before 1st April 2007, this application is to include a revised site plan for the development indicating the nine (9) foot high boundary wall which now surrounds the site*

- (4) Upon being granted approval-in-principle by the Claimant the Defendants are to submit plans for full approval within four months of the date of the grant of approval in principle*

- (5) No order as to costs*

Counsel for the Claimant

Counsel for the Defendant

Rene Williams

Dexter Theodore

- [3] By inadvertence the agreed order referred to block 1245 B parcel 669 instead of Block 1245 B parcel 668. This slip was corrected on subsequent application to the court by the Claimants.

- [4] Despite the consent order the defendants continued construction. They built a third storey on the building and constructed an external stairway to access it. A night club the Bliss night club now operates on the newly built level.

- [5] The Claimants sought to have the defendants committed to prison for breach of the court order. At the hearing of the committal proceedings the second defendant admitted that he undertook additional

construction in breach of the court order. I invited both counsel to provide me with written arguments on the sanction which should be imposed for the breach of the consent order.

[6] Mr. Dexter Theodore has helpfully distilled his submissions in a pithy document. He provided several authorities in support. He suggests that in the circumstances of this case, given the sincere repentance of the defendants; that a fine of \$5,000.00 payable to a local charity would be sufficient.

[7] Unfortunately I find that I cannot accede to the blandishments .of Mr. Theodore. The defendants were fully aware of what they were about. At all times they were intent on completing the construction and subsequently seeking to have it approved by the Development Control Authority. Despite the very clear terms of the court order they persisted. Affidavits filed by the defendants in this matter reveal themselves to be less than completely candid.

[8] Defendants must be reminded that court orders must be obeyed. It is on the foundation of respect for the order's of the court that the entire edifice of the legal system is built.

[9] The defendants are ordered as follows:

(1) The Respondents, its servants or agents are restrained from using the third floor of the three story building located on Block 1254 B Parcel 668 for the hosting of any public or private entertainment events from 31st July, 2009

(2) The Respondents are ordered to:

(i) demolish the walls and roof of the third floor, currently being used as an entertainment area named Bliss Night Club and Lounge of the three storey building located on Block 1254 B Parcel 668 on or before 30th September, 2009

(ii) remove the windows, doors and all other fixtures including the toilets, cupboards, air-conditioning units located on the third floor of three storey building located on Block 1245 B Parcel 668 on or before 30th September, 2009

(iii) demolish on or before 30th September, 2009 the two straight flight concrete steps leading to the third floor of the building which are located on

(a) the northern boundary of Block 1254 B Parcel 668; and

(b) *the western façade of the three storey building located on Block 1254 B Parcel 668*

(3) *The Respondents are further ordered to submit an application for the retention of the unauthorized two-story building located on Block 1254 B Parcel 668 on or before 30th September, 2009. The application must include a site plan indicating a minimum of nine (9) parking spaces with each parking measuring 8' x 16' and a driveway measuring no less than 18 feet.*

(4) *The Respondents must ensure that a minimum of nine (9) parking spaces to service Block 1254 B parcel 668, with each parking space measuring 8' x 18' and a driveway measuring no less than 18 feet exist on or before 30th September, 2009*

(5) *Should the Respondents fail to demolish the third floor of the unauthorized three-storey building located on Block 1254 B Parcel 668 by 30th September, 2009 the Applicant, its servants or agents be at liberty to enter upon the Block 1254 B Parcel 668 and demolish the third floor of the three-storey building located thereupon and recover the costs of the demolition from the Respondents*

(6) *Should the Respondents fail to:*

(i) *Submit an application for the retention of the unauthorized two storey building; and*

(ii) *Provide the minimum of nine (9) parking spaces measuring 8' x 18' and a driveway measuring no less than 18 feet on or before 30th September, 2009 a fine of \$172,750.00 is to be paid by the Respondents*

[10] Additionally the defendants will pay the cost of these contempt proceedings which I fix in the sum of \$1,400.00.

BRIAN COTTLE
High Court Judge