

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
(CIVIL)**

SUIT NO: NEVHCV2011/0191

**In the Matter of Condominium
Property registered as Condominium
No. 5 known as Nelson Spring
Condominium.**

and

**In the matter of Section 7 of the
Condominium Act Cap 10.03 and
Section 3 of the Condominium
Regulations.**

and

**In the matter of Section 19 of the Title
by Registration Act Cap 10.19**

and

**In the matter of lands registered in
Book 43 Folio 58, Book 47 Folio 431 and
Book 47 Folio 432.**

BETWEEN:

Nelson Spring Condominium Homeowners Association - Claimant

and

Beach Front Condominium Holding Co. Ltd. - 1st Defendant

Deon Daniel- 2nd Defendant

Nelcia Daniel- 3rd Defendant

The Registrar of Titles- 4th Defendant

The Attorney General of St. Kitts and Nevis- 5th Defendant

APPEARANCES: Ms. Kurlyn Merchant for the Claimant.

Mr. Vincent Byron for the 1st, 2nd and 3rd Defendants

Ms. Alethea Gumbs for the 4th and 5th Defendants

DECISION

2014: May 06

2014: June 24

[1] **WILLIAMS, J. (Ag):** This matter began by way of Fixed Date Claim Form on the 5th December 2011 whereby the Claimant sought against the Defendants the following:

i.) A Declaration that:

a. The actions of the 1st, 2nd, and 3rd Defendants in executing the Amended Declarations of Covenants, Conditions and Restrictions filed on the 23rd day of October 2009 were fraudulent and wilful misrepresentation.

b. The Amended Declaration of Covenants, Conditions and Restrictions filed on the 23rd October 2009 was not amended according to Section 7 of the Condominium Act Cap 10.03 and should be deemed null and void.

c. The 4th Defendant was negligent in not ensuring that the requirements in Section 7 of the Condominium Act and Section 3 of the Condominium Regulations were met prior to accepting the Amended Declaration for registration.

d. The description of the property of Nelson Spring Condominium according to the Declaration of Covenants, Conditions and Restrictions filed on the 7th day of April 2006 is the proper description of Nelson Spring Condominium.

e. The Restaurant and Gym falls within the description of the property of Nelson Spring Condominium and the Claimant is entitled to possession of the said Restaurant and Gym.

f. The Certificate of Title registered in Book 47 Folio 431 and Book 47 Folio 432 in the name of the 1st Defendant which concerns the description of lands found in Book 43 Folio 58 were wrongly issued and ought to be cancelled.

ii. Damages for Trespass of the Agents of the 1st Defendant and loss of Rental Income.

iii. Costs.

iv. Such further and other relief as this Honourable Court deems just.

[2] The facts of this Application presently before the Court are as follows;

[3] On the 22nd December 2011 the 1st, 2nd and 3rd Defendants filed an Application to strike out the Fixed Date Claim Form pursuant to Rule 26.3 (2) (a) for failure to comply with Rule 8.1 (4) and 8.1 (5) on the grounds that every action must be brought by way of a Claim Form pursuant to

Form 1 of the CPR 2000 subject to certain specific exceptions which require a Fixed Date Claim Form, and alternatively that the Claimant's case is an abuse of the process of the Court as the matter was already determined by Redhead J. in a previous case.

- [4] On the 14th January 2013, the Court ordered that the Fixed Date Claim Form be rectified and the matter proceed as though it is a Claim Form.
- [5] On the 17th October 2013, the 4th and 5th Defendants filed a Notice of Application for an Extension of time to file and serve Standard Disclosure and Witness Statements and Relief from Sanctions pursuant to Rule 26.1(2) of the CPR 2000 and to comply with directions given by the Court on the 14th January 2013.
- [6] The grounds on which this Application are sought by the 4th and 5th Defendants are:
- (i.) That the Applicants/4th and 5th Defendants have failed to comply with the provisions of Rule 26.1 (2) (k) of the Civil Procedure Rules 2000.
 - (ii.) That the 4th and 5th Defendants failed to comply with Standard Disclosure and Witness Statements by the 8th March and 15th March 2012 respectively.

(iii.) The 4th and 5th Defendants have filed and served a comprehensive list of Documents on the 1st, 2nd and 3rd Defendants dated the 31st day of May 2013.

(iv.) The failure to comply on the part of the 4th and 5th Defendants was not intentional since there has been difficulty and delay due to unforeseen circumstances in obtaining information regarding the process of this matter from the Registrar who is on long leave.

(v.) The Defendants have generally complied with the relevant rules, Practice directions, orders and directions and hereby seek relief from all sanctions that can be imposed by this Honourable Court.

(vi.) This Application which seeks an Order extending the term of disclosure of documents, and to file and serve Witness Statements out of time, is being supported by an Affidavit, the failure was not intentional, there is good explanation for the said failure to comply on the part of the 4th and 5th Defendants and the Defendants have generally complied with all other relevant rules, practice directions, orders and directions of the Honourable Court.

[7] The 4th and 5th Defendants have also filed on the 4th October 2013 an Application to strike out the Statement of case supported by an Affidavit of Solicitor General Simone Bullen-Thompson for the following Orders:

(a.) That the Statement of Case (The Fixed Date Claim Form and/or the Statement of Claim of the Claimant be struck out against the 1st and 2nd Applicants/4th and 5th Defendants, the Registrar of Titles and The Attorney General of St. Christopher and Nevis as the Claimant's Statement of Case is improperly brought before this Honourable Court pursuant to the Eastern Caribbean Supreme Court CPR 2000 Part 26.3 (1) (c).

(b.) Under the Public Authorities Protection Act Cap 5.13 Section 2(1) of the Laws of the Federation of St. Christopher and Nevis, the Claimant's claim is statute barred and the Fixed Date Claim and/or Statement of Claim should be struck out.

(c.) The Statement of Case as set out in the Fixed Date Claim Form and/or Statement of Claim is procedurally improper pursuant to Section 139 of the Title by Registration Act Chapter 10.19 of the Laws of the Federation of St. Christopher and Nevis.

(d.) The Statement of Case of the Claimant should be struck out as against the 1st and 2nd Applicant/4th and 5th Defendants pursuant to the Crown Proceedings Act Cap 5.06 Section 4(5) of the Laws of the Federation of St. Christopher and Nevis.

(e.) Costs.

(f.) Any further relief that this Honourable Court deems just and reasonable.

CLAIMANT'S SUBMISSIONS

[8] Learned Counsel for the Claimant in response to the Notice of Application and Affidavit filed by the 1st, 2nd and 3rd Defendants on the 31st May 2013 to strike out the Statement of Case on the grounds that the Claim does not disclose reasonable cause of Action and is an abuse of the process of the Court submitted that;

(a). The Claimant company was created by registration of a Declaration of Covenants, Conditions and Restrictions filed on the 7th April 2006.

(b). Section 13 (3) of that Declaration sets out that "It shall be the duty of the Corporation to effect compliance by the owners with the provisions of this Act, and the Declaration and the by-laws may specify the duties of the Corporation consistent with this".

(c). Among the objects of the Corporation set out in Section 14 (1) of the Act, it is the duty to carry out any other duties as prescribed by the Declaration or by the by-laws.

(d). Therefore the Association is a creature of statute and the Declaration and description must be regarded as its Constitution and accorded their proper significance in Law.

[9] Learned Counsel cited the case of Citco Global Custody N.V vs. Y2K Finance Inc. HCVAP 2008/022 in which the Principles governing an application to strike out a Statement of Claim is set out, and echoed the dicta of Edwards J.A who decided that “where the Claim sets out no facts indicating what the Claim is about or if it is incoherent and makes no sense, or if the facts, even if true do not disclose a legally recognizable Claim against the Defendant.”

[10] The Learned Judge in the referenced case quoted Blackstone’s Civil Practice 2009 which identifies the following circumstances as providing reasons for not striking out a Statement of Case.

“Where the argument involves a substantial point of Law which does not admit of a plain and obvious answer; or the law is in a state of development or where the strength of the case may not be clear because it has not been fully investigated. It is also well settled that the Jurisdiction to strike out is to be used sparingly since the exercise of the Jurisdiction deprives a party of its right to a fair trial, and its ability to strengthen its case through the process of disclosure and other Court procedures such as

requests for information, and the examination and cross-examination of witnesses often change the complexion of a case. Before using CPR 26.3 to dispose of “side issues”, care should be taken to ensure that a Party is not deprived of the right to a Trial on issues essential to its case.”

[11] Counsel submitted on behalf of the Claimant that the Claim that is filed set out clearly the facts, and concerns the illegal amendment of a Declaration which created the Claimant Company. Counsel contended that the claim clearly sets out that the Declaration was amended without the consent of all Homeowners at the time which was a requirement set out in the Condominium Act and the Declaration which was regarded as the Constitution of the Association.

[12] As a result of the illegal amendment this has led to a dispute over the ownership of lands referred to as the Restaurant and Gym. Therefore the Claimant has claimed a Declaration for possession of the said lands and for cancellation of Titles issued to the 1st Defendant for the said lands and claims for Damages for Trespass.

[13] Counsel for the Claimant further argues that the case for the Claimant is coherently set out in the Statement of Claim dated the 5th December 2011, where the Claimant sets out the legal requirement for amending a Declaration and the particulars of the Defendants fraud and wilful

misrepresentation. A schedule of the Registered Homeowners as well as Exhibits which in the Claimant's opinion are the Original Declaration, amended Declaration and copies of Titles referred to in the Statement of Claim.

- [14] Counsel submits that the second governing Principle set out in the CITCO Judgment requires the Court to assume that the facts alleged in the Statement of Case are true and that the Claimant's allegations are factual as documents have been exhibited clearly in support of this contention. Counsel argues that the said documents allowed the Court to distinguish between Primary facts and/or conclusions or Inferences.
- [15] Counsel for the Claimant further submitted that Titles for the properties exhibited as "NSCHA 4" are indefeasible evidence that the lands now known as the Restaurant and Gym were transferred as forming part of the common property to which each homeowner holds an undivided interest in.
- [16] That the Titles exhibited as "NSCHA 5" are indefeasible evidence that after the date of the alleged amended Declaration, the 1st Defendant transferred the portions of lands known as the Restaurant and Gym to itself.
- [17] Learned Counsel contends that both the Statement of Claim and the Defendants own submissions raise points of Law which is still in a state of

development and the Claimant's claim will be strengthened only through the process of disclosure and cross-examination in a Trial. Counsel also submitted that the Claimant's Claim raised serious live issues which could only be determined after hearing the evidence, and that the matter was not one that was suitable for striking out.

ISSUES

- [18] a. Whether the Statement of Case brought by the Claimant and filed on the 5th December 2011, should be struck out on the ground that it does not disclose any reasonable ground for bringing the Claim.
- b. Whether the Statement of Case filed by the Claimant on the 5th December 2011 should be struck out on the ground that it is an abuse of the process of the Court.
- c. Whether the Claimant's Claim is statute barred.
- d. Whether the Claimant's Claim is procedurally improper as stated in **Section 139 of the Title by Registration Act Cap. 10.19.**
- e. Does **Section 4(5) of the Crown Proceedings Act Cap 5.06 of the Laws of the Federation of St. Christopher and Nevis** apply to the 4th and 5th Defendants case and therefore the Claimant's case should be struck out.

f. Does the **Public Authorities Protection Act Cap 5.13 Section 2 (1) (a) of the Laws of the Federation of St. Christopher and Nevis** apply to the 4th and 5th Defendants case and therefore the Claimant's Claim should be struck out.

g. Whether all the Defendants should be granted an Extension of time to file and serve Standard Disclosure Witness Statements and Relief from sanctions.

Legal Principles governing CPR 26.3 (1) (b) Applications to strike out Claims

[19] The Power of the Court to strike out a Statement of Case is provided for by Rule 26.3 (1) of the CPR 2000 which states as follows:

"In addition to any other power under these Rules, the Court may strike out a Statement of Case or part of a Statement of Case if it appears to the Court that-

(a). There has been a failure to comply with a rule, practice direction, order or direction given by the Court in the Proceedings.

(b.) The Statement of Case or Part to be struck out is an abuse of the process of the Court or is likely to obstruct the just disposal of the Proceedings or

(d). The Statement of Case or Part to be struck out is Prolix or does not comply with the requirements of Part 8 or 10.

[20] In the case of **Baldwin Spencer vs. The Attorney General of Antigua and Barbuda et al (Civil Appeal No. 20A of 1998)** Dennis Byron C.J (Ag) (as he then was) restated the test that should be applied on an application to strike out a Statement of Claim when he stated:

“This Summary Procedure should only be used in clear obvious cases, when it can be seen on the face of it, that a Claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the Court... Striking out has been described as “the Nuclear Power” in the Court’s arsenal and should not be the first and primary response of the Court. ”

[21] Also in the Interlocutory appeal in **Tawney Assets Ltd. vs. East Pine Management et al (BVI High Court Civil Appeal No. 7 of 2012)** Mitchell J.A (Ag) noted that:

“The exercise of this Jurisdiction deprives a party of his ability to strengthen his case through the process of disclosure, and other procedures such as requests for further information. The Court must therefore be persuaded either that a party is unable to prove allegations made against the other party; or that the Statement of Case is incurably bad or that it discloses no reasonable ground for bringing or defending the case or that it has no real prospect of succeeding at Trial.

[22] In the Citco Global Custody NV case Edwards J.A in dealing with an Application to Strike out a Statement of Claim again noted that;
“Striking out under the English CPR Rule 3.4 (2) which is the equivalent of our CPR 26.3 (1) (b) is appropriate in the following instances; where the Claim sets out no facts indicating what the Claim is about or if it is incoherent, and makes no sense, or if the facts it states even if true do not disclose a legally recognizable Claim.

[23] In the case of Ian Peters vs. Robert George Spencer (Antigua and Barbuda High Court Civil Appeal No. 16 of 2009) Pereira C.J (Ag) (as she then was) indicated that a Statement of Case is not suitable for striking out if it raises a serious live issue of fact which can only be determined at a Trial by hearing Oral evidence.

ABUSE OF PROCESS

[24] In the case of St. Kitts, Nevis, Anguilla National Bank vs. Caribbean 6/49 Limited (unreported Civil Appeal No. 6 of 2002, Saint Christopher and Nevis) Barrow J.A confirmed the text book examples of cases given of Abuse of Process contemplated by Part 26 (3) (1) (c) to include;

1. Issuing a Claim after the expiry of the Limitation Period.
2. Bringing a private Law action instead of proceedings for Judicial review.

3. Starting a case with no intention of pursuing it further.
4. Bringing a Case which is known to be incapable of proof.
5. Re-litigating a matter that has been decided.
6. Bringing a second action based on the same cause of action as forms the basis for proceedings in existence at the time of filing the second action.

ANALYSIS

- [25] As already stated, a Statement of Case or Part of a Statement of Case may be struck out by the Court if it appears that the Statement of Case or the Part to be struck out does not disclose any reasonable ground for bringing the action. It may also be struck out by the Court if it is an Abuse of the Process of the Court. (Rule 26.3 (1) of the CPR 2000)
- [26] In Order to determine if there are no reasonable grounds for bringing the Claim the Court looks at the Statement of Case to see if it discloses a Claim. The Court is therefore mandated to sift through the Statement of Case and consider whether there are any issues which would require judicial determination.
- [27] Striking out is appropriate where the Statement of Claim sets out no facts indicating what the Claim is about or if it is incoherent and makes no sense or if the facts it states, even if true do not disclose a legally

recognizable Claim against the Defendant. This Statement on the Law was endorsed in the Case of **Ian Peters vs. Robert George Spencer** per George-Creque J.A.

- [28] Counsel for the Claimant has alleged that the 1st, 2nd and 3rd Defendants fraudulently registered and placed their signatures to a document, knowing full well that the document had not been amended in accordance with the requirement of the legislation.
- [29] Counsel for the Claimant Ms. Merchant submitted that at the time of the alleged amended declaration, the 1st Defendant was not the only owner and produced documents which appeared to be Memoranda of Transfers for four other persons.
- [30] Ms. Merchant also further contended that the 1st, 2nd and 3rd Defendants have equated the date of Registration of the new owners as the date on which the Titles were signed by the Registrar and that it did not matter when the Certificate of Title is actually signed but instead when the Memorandum of Transfer was presented.
- [31] Counsel also cited the provisions of **the Condominium Act in Particular Section 7, 8 and schedule 3** in support of the Claimant's arguments of what a **Description** must contain to be registered under the

Condominium Act. Also in contention according to is that the Certificates of Title issued for the Gym and Restaurant were wrongly issued.

[32] Counsel for the 1st, 2nd and 3rd Defendants Mr. Byron contended that the Amended Declaration exhibited by the Claimant clearly contains the consent of the 1st Defendant which was the only person capable of qualifying as an owner at the date of filing of the Amended Declaration.

[33] Counsel also argues that the Claimant has no locus standi to bring this action since under **Section 139 of the Title by Registration Act**, any Party aggrieved by any Act of The Registrar must first apply to the Registrar of Titles to set forth in writing, the grounds upon which she/he proceeded.

[34] It was further contended by the 1st, 2nd and 3rd Defendants that the Claimant's claim for Trespass and Loss of Income is misconstrued and no particulars of the alleged Trespass and Loss of Income has been pleaded.

This was essentially the case of the **1st, 2nd and 3rd Defendants**.

[35] Counsel for the 4th and 5th Defendants submitted that under the Public Authorities Protection Act Cap 5.13, the Claimant's Claim is statute barred and procedurally improper pursuant to **Section 139 of the Title by Registration Act Cap 10.19**.

[36] Counsel for the 4th and 5th Defendants further contends that the Registrar of Titles was in conformity with the Act and complied with the requirements

in the Condominium Act and Condominium Regulations prior to accepting the Amended Declaration for registration.

[37] In the case of English Haven Ltd. vs. The Registrar of Lands et al ANUHCV2007/0277 Blenman J. (as she then was) stated in relation to the Court's powers to strike out a Statement of Case as being an abuse of the process of the Court that;

"This limb requires that the process of the Court must be used properly and must not be abused. The Court will not entertain frivolous and vexatious matters. An Abuse of the Court's process usually arises in circumstances in which two or more set of proceedings are brought in respect of the same subject-matter which can amount to that harassment of the Defendant. The Court always prevents the improper use of its machinery and will not allow process to be used in an oppressive manner, but the Court before exercising its jurisdiction to strike out must ensure that the Statement of Case is devoid of merit."

[38] Further although the term "Abuse of the Court's process" is not defined in the CPR it has been explained in another context as "using that process for a purpose or in a way significantly different from its ordinary and proper use". See Attorney General vs Baker [2000] 1FLR 759.

[39] It appears to me that one of the main reasons upon which the 1st, 2nd, 3rd, 4th and 5th Defendants have grounded their Application to strike out the Statement of Claim is that the present case at bar is **Res Judicata** in that a Judgment was delivered by **Justice Redhead** on the 2nd May 2012 in the case of **John Koresko vs. Nelson Spring Homeowners Association et al. NEVHCV2012/0027.**

[40] I am of the view that Counsel for the 1st, 2nd and 3rd Defendants reliance on this Judgment of the learned Judge may be misplaced as the case involved an application for an Interim Injunction by the Claimant John Koresko. The Claimant in the present case at bar was named as a Defendant in the said case, and the issues in the said Claim are not the same as present Claim at Bar. The case of **Stephenson vs. Garnett [1889] 1 Q.B pg 680** Smith L.J is not applicable in the circumstances.

[41] Finally while the Statement of Claim filed with the related Affidavits, appear to make serious allegations against the 1st, 2nd, 3rd, 4th and 5th Defendants, In my opinion, the allegations are highly irrelevant to the issue of Fraud and the Statute of Limitation raised in this case.

[42] The Law is well settled that when the Court exercises its Jurisdiction on the basis that the Statement of Claim discloses no reasonable ground for bringing the Claim, this must include Statements of Case which are

unreasonably vague, unsustainable, incoherent, scurrilous or ill-founded, or do not amount to a legally recognizable claim. This is also applicable when the Court exercises its inherent Jurisdiction.

See: Spencer vs. The Attorney General of Antigua & Barbuda Civil Appeal No. 20A of 1997.

STATUTE OF LIMITATION

[43] The 4th and 5th Defendants stated that the Claim is statute barred and have relied on Section 2 (1) (a) of the Public Authorities Protection Act Chapter 5.13 of The Laws of St. Christopher & Nevis.

The Section states that;

“Where any action, prosecution or proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act or any Public duty or authority or any alleged neglect or default in the execution of any such act, duty or authority, the following provisions shall have effect;

(a). The action, prosecution or proceeding shall not lie or be instituted, unless it is commenced within six months next after the Act, neglect or default complained of or in the case of a continuance of Injury or

damage, within six months next after the ceasing thereof. (My emphasis)

[44] The 4th and 5th Defendants have pleaded the above Section to buttress their submission that the Claimant's claim is statute barred and should be struck out; having not commenced within six months after the Act, neglect or default complained of or within six months after the ceasing thereof.

[45] The Claimant's have submitted that it continues to suffer loss and damage, as the 1st Defendant through its agents, continue to occupy the lands in dispute and therefore there is a continuance not a cessation of the Injury or Damage as contemplated by the Public Authorities Protection Act. Therefore according to Counsel for the Claimants it cannot be submitted that the Claim is statute-barred.

[46] The effect of this Section is that there is a Time limit of six months for a Claimant to bring a Claim against any person for any alleged neglect or default in the execution of such duty or authority or of any alleged neglect or default in the execution of such act, duty or authority.

[47] The Case of Bradford Corporation vs. Myers [1916] 1AC 242 is instructive and the generally accepted starting point for the establishment of the principle that a Public authority is not protected by the Act on each

occasion that it is alleged to have caused harm to someone. In that case

Lord Buckmaster explained that:

“In other words, it is not because the Act of which an action arises is within their power that a Public Authority enjoys the benefit of the statute. It is because the act is one which is either an Act or in the direct execution of a statute, or in the discharge of a Public duty, or the exercise of a Public authority. I regard these latter words as meaning a duty owed to all the public alike or an authority exercised impartially with regard to all the public. It assumes that there are duties and authorities which are not public, and that in the exercise or discharge of such duties or authorities, this protection does not apply.”

[48] Following the case of **The Attorney General of the Virgin Islands vs. Daphne Alves CA BVIHCVAP 2011/0065** Mitchell JA echoed the words of Lord Buckmaster in the **Bradford Corporation Case** when he said that; “The Public Authorities Protection Act does not apply to a person claiming whether in Tort or in Contract as an employee of a Public authority. There is no private duty owed by the state to a Government Employee which is spate from the public duties being performed by the State. It does not matter that the Act complained of was an issue between the parties in respect of the Claimant’s employment, and that no one but

the Claimant could have brought the action. The Act is binding on Public Servants and others claiming against the Government within the terms of the Act.”

[49] In the case at Bar, the Registrar is being sued for Negligence by the Claimants in that she allegedly did not ensure that the requirements in **Section 7 of the Condominium Act and Section 3 of the Condominium Regulations** were met prior to accepting the Amended Declaration for Registration. The Attorney General is also joined in the suit as being vicariously liable for the actions of the Registrar who is an employee of the State.

[50] The Claimant case was filed on the 5th December 2011 and according to the pleadings in the Statement of Claim under **Loss to the Claimant** it states, the Certificates that were wrongly and negligently issued by the 4th Defendant was done on the 31st December 2009, almost two years after the alleged Negligence and wrongdoing on the Part of the 4th Defendant.

[51] In the Privy Council case from Jamaica of **Balteano Duffus vs. National Water Commission [2007] UKPC 35**, the Privy Council agreed with the finding of the Court of Appeal that the Claimant’s action having commenced in excess of one year after the expiry of the limitation period, under the Act was barred.

[52] Applying the cited authorities to the facts of this case. I hold that the protection afforded by the Act **would** apply to the Registrar of Titles and the Attorney General of St. Kitts and Nevis and I consider the matter to be statute barred as it relates to the 4th and 5th Defendants.

However I do not hold the view that the alleged Injury is continuing in the Form of Trespass by the 1st, 2nd and 3rd Defendants.

[53] The issue of the Claimant's improper procedure has featured prominently in the pleadings of the 1st, 2nd and 3rd and also the 4th and 5th Defendants, as provided under **Section 139 of the Title by Registration Act.**

The Section states "If any person shall be dissatisfied with any Act omission, refusal, decision, order, noting or other completed proceedings of a Registrar of Titles affecting the right of such person to any land or any Mortgage or encumbrance thereon, or any caveat in relation thereto, **such person may apply to the Registrar of Titles to set forth in writing the grounds upon which he proceeded and thereupon, such person may bring any question in relation thereto before the Court by Summons served on the Registrar of Titles and the Court shall hear and determine the question at issue, and give such order and directions thereupon as may appear just. (My emphasis)**

[54] The Defendants submit that the Claimant should have availed itself of the relief and procedure under the said Section of the **Title by Registration Act** and having not done so, it is now procedurally improper before the Court.

[55] The Claimant submits that the said Section appears to be discretionary and not mandatory nor does it appear to suggest that if a question is not at first brought to the Registrar, an aggrieved person is thereafter barred from bringing a Claim.

[56] **Section 139 of the Title by Registration Act** expressly and clearly sets out the procedure to be followed where a party is aggrieved by an Act, omission, refusal, decision, order, noting or otherwise completed proceeding by the Registrar. I do not hold the view that this is a discretionary procedure in particular, because it is placed under **Part X Powers and Duties of Registrar of Tiles, and Mode of reviewing their decisions. (My emphasis)**

There is no ouster of the Jurisdiction of the Court by that Section because it clearly states **“Such person may apply to the Registrar of Titles to be set forth in writing... and thereupon such Person may bring any question in relation thereto before the Court by summons served on the Registrar.”**

[57] In the case of **The Attorney General of Saint Lucia vs. Vance Chitolie Civil Appeal No. 14 of 2003** Gordon JA echoing the words of Asquith L.J in the case of **Wilkinson vs. Banking Corporation [1948] 1KB 721** stated; “It is undoubtedly good law that where a statute creates a right and, in plain language gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to the remedy or that tribunal and not to others... As the House of Lords ruled in **Pasmore vs. Oswaldtwistle U.D.C [1898] A.C 387 (per Lord Halsbury)** “The principle that where a specific remedy is given by statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by statute, is one which is very familiar and which runs through the Law. The real answer to the Plaintiff’s contention under this head can be put in several ways. No act of the Parties can create in the Courts a jurisdiction which Parliament has said will vest, not in the Courts, but exclusively in some other body. Nor can a party submit to, so as to make effective, a jurisdiction which does not exist, which is perhaps another way of saying the same thing.”

[58] In the circumstances and having carefully reviewed the provisions of **The Title by Registration Act in particular Section 139** and all of the cited authorities, the Court is of the opinion that the Claimant should have

availed itself of the procedure and remedy under the said Act, and is therefore procedurally improperly before the Court and the Court therefore has no jurisdiction to hear the Claimant's Claim.

[59] Further **The Crown Proceedings Act Cap 5.06 Section 4 (5) of the Laws of the Federation of St. Kitts and Nevis** states that;

"No proceedings shall lie against the Crown by virtue of this Section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him or her or any responsibilities which he or she has in connection with the execution of Judicial process."

[60] Therefore the Registrar of Titles by placing a Certificate of Title, dated, signed and sealed in the correct volume, and making thereon the number of the Folium by which it is thereafter to be designated and referred to.... has registered the document according to the **First schedule of the Title by Registration Act Cap 10.19** has discharged or purported to discharge her responsibilities which she has in connection with the execution of a Judicial process.

[61] Therefore the Registrar of Titles in accepting the Amended Declaration and registering it was discharging the responsibilities of a judicial nature vested in her and acted properly, without negligence or fraud.

[62] According to the Evidence presented and the submissions that were made by the 1st, 2nd and 3rd Defendants, the Amended Declaration was filed and recorded on the 21st October 2009 and issued on the 23rd November 2009 by the Registrar of Titles. On that said date the Amended Declaration of Covenants, Conditions and Restrictions for Nelson Spring Condominium appeared to have the sole consent of **Beach Front Condominium Holding Ltd** which was signed by Deon Daniel and Nelcia Daniel, who are Directors of the said company.

[63] In the Affidavit of Charmaine Hanley Clerk to the Solicitor acting for other Homeowners John William Henry, Eugene Cranford, Margaret Ann Cranford and Judith Phyliss Parris filed by the Claimants on the 16th October 2013, at paragraph 17 of her Affidavit she stated that “up to the start of December 2009, the Certificates of Title of the abovementioned homeowners **had not been signed** by the Registrar of Titles.. who signed the Certificates of Title on the 2nd December 2009.” On perusal of the said Certificates of Title they bear the date of the 3rd December 2009, which is the actual date of **Registration** of the Certificates of Title.

[64] Under the provisions of Section 7 of the **Condominium Act Cap 10.03 Amendment of Declaration and registration of Amendment** it states that;

1."Subject to subsections (3) and (4) the Declaration may be amended only with the consent of all owners and persons having registered encumbrances against the units and common property.

2. Subject to subsection (3) when a Declaration is amended, the Corporation shall register a copy of the Amendments executed by all the owners and all persons **having registered encumbrances against the units and common interests** and until the copy is registered, the amendment shall have no effect. "

[65] Section 5 (1) of the **Title by Registration Act** also provides that "From and after the time when any land is brought under the operation of this Act, **all dealings** shall take effect from the date and act of Registration and **not from the date of execution or delivery of any Instrument or document. (My emphasis)**

[66] In the First schedule of the said Act **DEALING** is defined as follows:
"A dealing with land is any act in regard thereto which requires an application to the Registrar of Titles to have the Act completed and made available by Registration. A sale of land, for example is evidenced by the registered proprietor signing in the proper manner a Memorandum of Transfer, and the Memorandum of Transfer must be presented to the

Registrar of Titles to be dealt with by him or her, without which there is no registration of Title, and the sale is not completed...

[67] In the case of Kirvek Management and Consulting Services Ltd. vs. The Attorney General of Trinidad and Tobago [2002] UKPC 43 submitted by the Claimant, the learned Law Lords explained the meaning attributed to the words “in connection with the execution of a Judicial process.” Those words appeared in the State Liability and Proceeding Act Chapter 8.02 of the Laws of Trinidad and Tobago and is similar in wording to the Crown Proceedings Act Chapter 5.06 of the Laws of the Federation of St.

Christopher and Nevis.

In their Lordships opinion the word “execution” contemplated something done for the purpose of carrying out a Court Order.

[68] In the case at bar, the submission was made by the 4th and 5th Defendants that the Registrar was discharging or purporting to discharge any responsibilities of a judicial nature vested in her and was therefore entitled to the protection of the Act. The submission by Counsel for the 4th and 5th Defendants did not and quite rightly so extend to “responsibilities” which he or she has in connection with the execution of a judicial process which clearly the Registrar in the present case was not discharging.

I therefore did not consider this case submitted by the Claimant to be helpful or relevant to this matter.

[69] Accordingly I reiterate that the Registrar of Titles in accepting the Amended Declaration filed in the High Court Registry on the 23rd October 2009 acted properly and without negligence or fraud and that she was discharging her responsibilities of a judicial nature that were vested in her.

Consequently I am of the considered opinion that the Registrar of Titles would be entitled to the protection provided under the **Crown Proceedings Act Cap 5.06 Section 4 (5) of the Laws of St. Christopher and Nevis and the Public Authorities Act Cap 5.13 Section 2 (1) (a) of the Laws of St. Christopher and Nevis.**

[70] In the circumstances and having reviewed all the authorities and legislation, I find the arguments advanced by the 4th and 5th Defendants to be persuasive, and that the Claimant's case against the 4th and 5th Defendants is misconceived and devoid of merit. I will therefore strike out the Statement of Claim against the 4th and 5th Defendants.

[71] Accordingly the Notice of Application filed by the 4th and 5th Defendants for an extension of time to file and serve Standard Disclosure and Witness

Statements and Relief from Sanctions is dismissed as being no longer relevant to the Claim.

[72] In relation to the Claimant's Affidavit in response to the 1st, 2nd and 3rd Defendants **Application for extension of time** to file and serve **Standard Disclosure, Witness Statements and Relief from Sanctions**. I have already made a finding that the Claimant is procedurally improperly before the Court. I reiterate that **Section 139 of the Title by Registration Act** provides a clear procedure to be followed by persons aggrieved by acts of the Registrar, that Section bears repetition because of its importance states;

"If any person is dissatisfied with any act, omission, refusal, decision, direction, Order, Noting or other completed proceeding of a Registrar of Titles affecting the right of such person to any land, or any mortgage or encumbrance thereon, or any caveat in relation thereto, such person may apply **to the Registrar of Titles to set forth in writing the grounds upon which he or she proceeded and thereupon. Such person may bring any question in relation thereto before the Court by summons served on the Registrar of Titles and the Court shall hear and determine the questions at issue and give such order and directions there upon as may appear just.**

[73] There is no Evidence that was adduced to show that this procedure as laid down in the Act was complied with by the Claimants. **[See Attorney General of Saint Lucia vs Vance Chitolie Ca 14/2003.]**

I therefore consider this Claim by the Claimants to disclose no reasonable ground for bringing the Claim and is an Abuse of the process of the Court.

CONCLUSION

[74] Accordingly my Order is as follows;

- a. The Fixed Date Claim Form and Statement of Claim filed on the 5th December 2011 is hereby struck out for the reasons already given.
- b. The 1st, 2nd and 3rd Defendants application for an Extension of Time to file and serve Standard disclosure and Witness Statements and Relief from Sanctions is dismissed as not being relevant.
- c. The Application by the 1st, 2nd and 3rd Defendants to strike out the Statement of Claim on the grounds that it is an Abuse of the Process of the Court and does not disclose any reasonable ground for bringing the Claim is allowed.
- d. The Claimant's claim against the 4th and 5th Defendants is struck out for reasons already given.

e. The 4th and 5th Defendants application to strike out the Claim Form is allowed.

f. The 4th and 5th Defendants application for an extension of time to file and serve Standard Disclosure and Witness Statements and Relief from Sanctions is dismissed as not being relevant.

g. i. Costs of \$1000.00 to be paid collectively to 1st, 2nd and 3rd Defendants.

ii. Costs of \$1000.00 to be paid collectively to the 4th and 5th Defendants.

The Court gratefully acknowledges the assistance of all learned counsels in this matter.

Lorraine Williams
High Court Judge (Ag)