

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA NO. 390/87

IN THE MATTER OF

CHUNILAL NARINE

Plaintiff

AND

RAPHIQUE MOHAMMED

Defendant

Monday 10th April, 2000

Before: The Hon. Justice Nolan Breaux

Appearances: Mrs. P Roberts for Plaintiff
Mr Parillon for Defendant

Ruling

On 30th November, 1999, I dismissed the plaintiff's summons filed on 29th October, 1999 by which the plaintiff sought to vary a consent order dated 7th June, 1999. That summons sought liberty for the defendant to dispose of a parcel of land and to pay the plaintiff out of the proceeds thereof, the sum of \$75,000.00 in satisfaction of an outstanding judgment debt which was the subject matter of the consent order. I dismissed the plaintiff's summons on the basis that the order being by consent could only be changed by reason of mistake or fraud.

The plaintiff, by summons of 4th January, 2000 now applies for an order that they have been discharged from the terms and conditions set forth in the consent order

and that they can proceed to enforce their judgment against the defendant, obtained on 28th March, 1980.

The basis of the application is threefold.

- (1) The defendant failed to comply with the terms of the consent order because he failed to identify the parcel of land on or before 14th June, 1999 in accordance with Clause 2 of the consent order.
- (2) Mr Mervyn Thompson, Valuator, who was appointed pursuant to Clause 3 of the consent order, failed to carry out the valuation within the requisite period set out in the order.
- (3) The substratum of the consent order contemplated that planning permission had been granted for use of the parcel and that it was serviced by the utilities.

As to the first ground, it is noteworthy that the allegation was not raised in the first summons filed on 29th November, 1999, when the plaintiff came, not for a discharge, but for a variation to have the property sold at a price of \$90,000.00. There was then no allegation that the land had not been identified, or any complaint that any of the deadlines set in the consent order had not been kept by the defendant and it is more than a little odd that they should now be raised.

It seems to me therefore that at least at the time of filing of the first summons and certainly at the time of its hearing, identification of the parcel of the land was not an issue. Neither was the valuation of Mr Thompson. In those circumstances, even if those breaches did occur (and it is disputed by Mr Parillon that they did), any failure on the part of the defendant to meet deadlines appears to have been waived by the plaintiff.

As to the issue of planning permission, I do not agree that the substratum of the consent order contemplated the grant of planning permission, or that the premises were to be serviced by the utilities such as water and electricity. Any such provision should have been expressed in the consent order itself. The order is quite clear in its terms. The parties were concerned with the value of the land for the purpose of satisfaction of the judgment debt. In this regard, they agreed to be bound by Mr Mervyn Taylor's valuation and they remain so bound, unless they can show fraud or mistake in the procurement of the consent order.

The plaintiff's summons is dismissed with costs.

NOLAN P G BERAUX
Judge

10th April, 2000