

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: ANUHCV2022/0342

Formerly CLAIM NO. ANUHCV2019/0653

BETWEEN:

RICHARD CHARLES SAYER

Claimant

And

CARIBBEAN DEVELOPMENTS (ANTIGUA) LTD.

Defendant

Appearances:

Mr. Andrew Young and Ms. Jan Peltier for the Claimant

Mr. Hugh Marshall Jr. and Ms. Kema Benjamin for the Defendant

2026: June 15th

JUDGMENT

[1] **WILLIAMS, J.:** On 15th June the Court dismissed this claim with no order as to costs and undertook to provide brief reasons for doing so. The Claimant Mr. Charles Sayer sought specific performance, damages, interest and costs arising from an agreement dated 28th November 2013 concerning land at Jolly Harbour, namely Registration Section: South West, Block 55-1186A, Parcel 835 (Parcel 835).

[2] Until recently the Defendant Caribbean Developments (Antigua) Ltd. ("CDAL") was the registered proprietor of Parcel 835. The Claimant alleges that Defendant failed to take the steps required to transfer Parcel 835. On the other hand, the

Defendant denied liability and contended that the Claimant had failed to remove and relocate fencing as required by the agreement between the parties.

- [3] However, by the date of trial, Parcel 835 had been transferred by the Defendant, not to the Claimant personally, but to Vanova Group Inc. This was apparently in accordance with the Claimant's direction. Therefore, the remedy of specific performance was no longer available. Thus, trial would have proceeded solely on the issues of damages in addition to specific performance and costs.

Failure to File Witness Statements

- [4] At the commencement of trial, the Claimant intended to call Mr. Ronald Maginley as his witness. However, it was observed that no witness statement or witness summary had been filed in respect of Mr. Maginley's evidence. In fact, the only evidence was an affidavit sworn to by Mr. Maginley in support of an interlocutory application. No application had been made to the court for the affidavit to be used as Mr. Maginley's evidence at trial.
- [5] The Claimant filed what purported to be a document headed "Claimants Witness Statements" on 1st December 2022. However, no witness statements were attached to this document. Present counsel for the Claimant have represented him since 2023 and have attended several pre-trial hearings in this matter. Despite this, no application was made for an extension of time to file witness statements, relief from sanctions or for permission to rely on Mr. Maginley's affidavit at trial.
- [6] **Rule 29.11(1)** of the **Civil Procedure Rules (Revised Edition) 2023** provides as follows:
- "If a witness statement or witness summary is not served in respect of an intended witness within the time specified by the court, the witness may not be called unless the court permits."
- [7] **CPR 29.11(2)** further provides:

“The court may not give permission at the trial unless the party asking for permission has a good reason for not previously seeking relief under rule 26.8.”

- [8] The effect of **CPR 29.11** is that the Court’s discretion at trial is a limited one. A party who has failed to serve a witness statement or witness summary must show a good reason for not previously seeking relief under **CPR 26.8**. No such good reason was advanced in this case. The default was not a minor or technical one. It went to the evidence by which the Claimant proposed to prove the disputed matters at trial.
- [9] The consequence is that the Claimant could not call any witnesses to prove the disputed factual matters necessary to establish the claim. The burden remained on the Claimant to prove breach, causation and loss. Therefore, in the absence of admissible evidence the claim must be dismissed.
- [10] For the avoidance of doubt, the dismissal of the claim is not a determination that the Defendant’s interpretation of the agreement was correct. It is a determination that the Claimant, having failed to place admissible trial evidence before the Court, did not prove the remaining claim for damages.

Costs

- [11] **CPR 64.6(1)** provides:
- “Where the court, including the Court of Appeal, decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.”
- [12] However, **CPR 64.6(2)** provides as follows:
- “The court may however order a successful party to pay all or part of the costs of an unsuccessful party or may make no order as to costs but the court must state the reasons for its decision.”
- [13] This is an appropriate case to depart from the general rule. The Defendant has succeeded because the Claimant failed to file witness statements and not

because the Court has accepted the argument that it was entitled to withhold transfer of Parcel 835 indefinitely. On the material before the Court, the agreement dated 28th November 2013 does not expressly state that removal or relocation of the fencing by the Claimant was a condition precedent to transfer of title.

- [14] The Court must therefore balance the Claimant's procedural default against the Defendant's contribution to the continuation of the dispute. In the circumstances, the just and proportionate order is that each party bear its own costs.

Order

- [15] It is ordered that:
1. The claim is dismissed.
 2. No order as to costs.

Rene Williams
High Court Judge

By The Court

Registrar