**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2005 – 00553**

**Between**

**The Church of Spiritual Metaphysics**

**Claimant**

**And**

**Greeta Brown**

**Defendant**

**Before the Honourable Mr Justice Ronnie Boodoosingh**

**Appearances:**

**Mr Ernest Koylass SC leading Ms Debbie Roopchand for the Claimant**

**Mr Prem Persad-Maharaj and Mr Stephen Boodram for the Defendant**

**Date**: 21 June 2016

## RULING

1. This is a contempt of court application and an application to construe a consent/declaratory order previously entered before a now retired judge. The claimant is a church incorporated by an Act of Parliament. In 2005 the claimant brought this claim against the defendant for a declaration that the claimant was entitled to the use and

occupation of a piece of land comprising half lot being part of Lot 22 Springvale Village, Forres Park tenanted by Samuel Toby from Caroni (1975) Limited. The claimant was also seeking that the defendant break a galvanize fence erected on the land and an injunction restraining the defendant and her agents from entering and/or remaining on the said lands. Damages for trespass were also sought.

2. The church carries on a place of worship on the lands. They asserted that Samuel Toby had given permission to the claimant to construct a building on the half lot in about 1947. Samuel Toby was the minister of the church. His wife Iris Toby was the "mother" of the Church. She carried it on. After some disagreements, Charles Toby, the son of Samuel Toby, took over as the minister.

3. A building was constructed and a room used as a "Mourning Ground" was constructed to the back. This was of tapia material, then later of plastered bricks with galvanize sheets covering. In 2004 they began repairs to the mourning room.

4. The defendant is the successor to Iris Toby. She is Iris' granddaughter. Iris left her property to her. She has since obtained the tenancy of the land from the successor to Caroni Limited.

5. The Defence filed in January 2006 asserted that the use of the land was under a licence and consent was needed. The defendant said the licence was terminated in January 2006. The defendant counterclaimed for possession.

6. This matter progressed before Stollmeyer J. Witness statements were filed on both sides. On the day of the trial on 11 October 2006, a consent / declaratory order was entered as follows:

> IT IS BY CONSENT ORDERED AND DECLARED:
> By way of compromise of the respective claims of the Parties hereto that the Claimant is entitled to the use and occupation of All and Singular that piece or parcel of land comprising Half lot more or less forming part of Lot 099 Tenant No: 22, Springvale Forres Park and shown on the Plan hereto annexed and marked "A" as the shaded portion (hereinafter called "the said Lands") for as long as it likes.
> AND IT IS FURTHER ORDERED AS FOLLOWS:-

1. That the Defendant whether by herself, her servant and/or agents do within 48 hours break and remove all that wood and galvanize fence erected by the Defendant on the said land.
2. That the Claimant be at liberty to construct the Mourning Room as shown on the plan hereto annexed and marked "A" which when constructed shall leave a space of at least 6 ft from the Eastern boundary of lot 099 for the Defendant's use.
3. That any further construction work to be done on the said land by the Claimant, to be done only after obtaining the consent of the Defendant such consent not to be unreasonably withheld; and
4. That there be no order as to Costs.
5. Liberty to apply.
6. Claimant's Attorney to write up this order.

7. On 13 August 2010 an order for contempt was applied for by the Defendant against certain servants/agents of the Claimant on account of their constructing a chain-link wire fence on the property without the consent of the defendant; carrying out construction work without the consent of the defendant; re-wiring the electrical system, changing the roof and installing floor tiles and a ceiling without the consent of the defendant; carrying out construction at night causing a nuisance and by conducting services outside of the times indicated by their sign board; and making loud noises.

8. Affidavits were filed on both sides. The matter was adjourned on several occasions over a long period of time for the parties to talk and try to work out their differences given the

fact that they were both not going anywhere and they would continue to occupy their respective properties in close proximity on the same lot and that they needed to find a mechanism to peacefully co-exist.

9. The attorneys commendably tried various measures, met with the parties, undertook a site visit etc. However, these failed to arrive at any compromise position.

10. We thus came to the point of both sides filing written submissions in respect of the construction of the order of Stollmeyer J and to determining what were the entitlements of the respective parties under the terms of the order and whether contempt was made out.

11. In **Leo Abrahams v Doll Basdeo, Civil Appeal No. 74 of 2012**, unreported, delivered 13 November 2015, Mendonca JA outlined the approach to be taken when construing a consent order. He said:

> "The Court's role in interpreting an order is to discover and give effect to the intention of the Court. The order must be interpreted objectively. The approach is broadly to apply the principles of statutory interpretation. The starting point is the natural and ordinary meaning of the words used in light of the syntax, context and background in which the words were used (see **Feld v Secretary of State for Business, Innovation and Skills** [2014] EWHC 1383)."

12. Further the learned Justice of Appeal said:

> "40. In interpreting an order of the Court, as I mentioned, the object is to ascertain the intention of the Court. The order is to be interpreted objectively. The starting point is the natural and ordinary meaning of the words used in the light of the context, syntax and background in which the words are used. It is therefore relevant to note that the

word "in" used in the 2002 order can quite properly support the wider construction contended for by the respondent as among the possible meanings of the word is "concerned or involved with" ( see **Collins English Dictionary**( 7th ed) and " with respect to" (see the **Oxford Paperback Dictionary** (4th ed.)...

41. As background is relevant, it was appropriate for Counsel for the respondent to invite the Court to look at the affidavit that was before Best, J. when he made the order in 2002. It will also be appropriate to consider not only the affidavit but the application as well. That was made by summons before Best, J. It sought an order in the terms which the Judge made. The application therefore invited the Judge to make an order in terms of the summons. Although in construing a Court order the concern is with the intention of the Court in a case such as this where the Court makes an order in terms of a draft prepared by attorneys for the applicant who alone was present at the hearing it is also appropriate to consider what the applicant's attorneys could reasonably have intended in drafting the order in the way they did as far as that might be objectively determined on the evidence."

13. In **Foskett on the Law of Compromise 6th ed at para 5-02** the learned author stated:

"Subsequent to the conclusion of a compromise, questions may arise as to its meaning and effect. This can occur even when those with the highest calibre of legal expertise have been responsible for the drafting of the agreement. The task is to ascertain the common intention of the parties by construing the agreement."

14. In **Investors Compensation Scheme Limited v West Bromwich Building Society [1998] 1 W.L.R. 896 Lord Hoffman at p. 912-913 stated:**

"My Lords, I will say at once that I prefer the approach of the judge. But I think I should preface my explanation of my reasons with some general remarks about the principles by which contractual documents are nowadays construed. I do not think that the fundamental change which has overtaken this branch of the law, particularly as a result of the speeches of Lord Wilberforce in *Prenn v. Simmonds* [1971] 1 W.L.R. 1381, 1384-1386 and *Reardon Smith Line Ltd. v. Yngvar Hansen-Tangen* [1976] 1 W.L.R. 989, is always sufficiently appreciated. The result has been, subject to one important exception, to assimilate the way in which such documents are interpreted by judges to the common sense principles by which any serious utterance would be interpreted in ordinary life. Almost all the old intellectual baggage of

"legal" interpretation has been discarded. The principles may be summarised as follows.

(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

(2) The background was famously referred to by Lord Wilberforce as the "matrix of fact," but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.

(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.

(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax: see *Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd.* [1997] A.C. 749.

(5) The "rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in *Antaios Compania Naviera S.A. v. Salen Rederierna A.B.* [1985] A.C. 191, 201:

"if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense."

If one applies these principles, it seems to me that the judge must be right and, as we are dealing with one badly drafted clause which is happily no longer in use, there is little advantage in my repeating his reasons at greater length. The only remark of his which I would respectfully question is when he said that he was "doing violence" to the natural meaning of the words. This is an over-energetic way to describe the process of interpretation. Many people, including politicians, celebrities and Mrs. Malaprop, mangle meanings and syntax but nevertheless communicate tolerably clearly what they are using the words to mean. If anyone is doing violence to natural meanings, it is they rather than their listeners.

I shall, however, make four points supplemental to those of the judge. First, the claim form was obviously intended to be read by lawyers and the explanatory note by laymen. It is the terms of the claim form which govern the legal relationship between the parties. But in construing the form, I think that one should start with the assumption that a layman who read the explanatory note and did not venture into the claim form itself was being given an accurate account of the effect of the transaction. It is therefore significant that paragraph 4 of the note says categorically and without qualification that the investor gives up all his rights against anyone else and transfers them to I.C.S. If the effect of the claim form was that the investor retained his claim against the building society, paragraph 4 of the note was very misleading. Secondly, this leads to the conclusion that section 3(b) was intended only to deal with the possibility that a lawyer might argue that some right was a "claim" when it would not be regarded as a claim by a layman. This is a fair description of the possibility of a reduction of the mortgage debt as part of the equitable taking of accounts upon rescission, which would not result in the investor receiving any money but merely having to pay less to W.B.B.S. Thirdly, any lawyer would think it extremely odd for I.C.S. to take an assignment of the investor's claim for damages against the solicitors and leave the investor with a claim for the same damages against W.B.B.S. He would be likely to wonder whether this was conceptually possible and, as I shall explain, I think that his doubts would be well founded. The investor and I.C.S. could not between them recover more than the loss which the investor had actually suffered. As a

> matter of common sense, one would therefore expect that I.C.S. either had a right to the damages or it did not. It would seem eccentric to leave this question to be decided (if such a thing were possible) by a race to judgment. Fourthly, no lawyer in his right mind who intended simply to say that all claims against the W.B.B.S. were reserved to the investor would have used the parenthesis. Nor, unless he intended to limit the reservation to the amount, if any, which happened to be outstanding on the mortgage, would he have described them as claims "in which you claim an abatement of the sums which you would otherwise have to repay." And it is difficult to think of any reason for such an arbitrary limitation.
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> Finally, on this part of the case, I must make some comments upon the judgment of the Court of Appeal. Leggatt L.J. said that his construction was "the natural and ordinary meaning of the words used." I do not think that the concept of natural and ordinary meaning is very helpful when, on any view, the words have not been used in a natural and ordinary way. In a case like this, the court is inevitably engaged in chosing between competing unnatural meanings. Secondly, Leggatt L.J. said that the judge's construction was not an "available meaning" of the words. If this means that judges cannot, short of rectification, decide that the parties must have made mistakes of meaning or syntax, I respectfully think he was wrong. The proposition is not, I would suggest, borne out by his citation from *Through the Looking-Glass* . Alice and Humpty-Dumpty were agreed that the word "glory" did not mean "a nice knock-down argument." Anyone with a dictionary could see that. Humpty-Dumpty's point was that "a nice knock-down argument" was what *he* meant by using the word "glory." He very fairly acknowledged that Alice, as a reasonable young woman, could not have realised this until he told her, but once he had told her, or if, without being expressly told, she could have inferred it from the background, she would have had no difficulty in understanding what he meant.

15. The clear words are to be given effect to. The context and background is also important. The context and background here would include the pleadings and evidence which both sides had put forward. It is noteworthy that the claim form used to same words of use and occupation which were used in the compromise agreement and the court's order. What then is the context and background here?

16. The church has operated on this half lot for a very long time. It had originally been built there based on the fact that Samuel Toby was the minister and he had given permission for the church to exist on the property where he also lived. I note that there is a common gate which allows entry to the defendant's house and the church. The compromise and declaration made by the court recognised the claimant's right to the use and occupation of the half lot for as long as it likes. Further orders were also made.

17. What has given rise to these issues is the parking of vehicles by the defendant or her agents on the half lot, "loud noises" made by the church members, the locking of this gate, whether the defendant's permission is needed for construction of a fence, and the hours of the church.

18. Several useful cases were cited by the defendant's attorney dealing with the construction of the terms use and occupation. It is helpful to refer to a few of them.

19. In **Morss v Morss and Others [1972] 1 All ER 1121** Davies LJ construing the use of the words "… upon the Petitioner undertaking:—(1) to make available for the Respondent's use the house that he is now erecting at Salisbury Avenue, Cheam, Surrey, rent free for her life or until such time as circumstances should arise in which by reason of her conduct she is debarred by the Court from access to the children of the family" said at 1124 - 1125:

> "As I understood counsel for the wife's argument, the effect of it was that the word 'use' in the undertaking—'to make available for the [wife's] use the house'—gave the wife the right to do as she pleased with it, to occupy it or not occupy it, or to let it as she has done; and he went so far, I think, as to suggest that by the terms of the document the wife had an equitable interest (as it used to be) in the house and, therefore, it is to be assumed, under the Settled Land Act 1925 could sell it and receive the income from the proceeds. It seems to me that the words used are wholly inapt to create such an estate or interest."

20. In **Graysim Holdings Ltd v P & O Property Holdings Limited (1995) 4 All ER 831** Lord Nicholls at 835 -836 said:

> "As has been said on many occasions, the concept of occupation is not a legal term of art, with one single and precise legal meaning applicable in all circumstances. Its meaning varies according to the subject matter. Like most ordinary English words, 'occupied', and corresponding expressions such as occupier and occupation, have different shades of meaning according to the context in which they are being used. Their meaning in the context of the Rent Acts, for instance, is not in all respects the same as in the context of the Occupiers' Liability Act 1957.
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> This is not surprising. In many factual situations questions of occupation will attract the same answer, whatever the context. A tenant living alone in a detached house under a residential lease would be regarded as the sole occupier of the house. It would need an unusual context to point to any other answer. But the answer in situations which are not so clear cut is affected by the purpose for which the concept of occupation is being used. In such situations the purpose for which the distinction between occupation and non-occupation is being drawn, and the consequences flowing from the presence or absence of occupation, will throw light on what sort of activities are or are not to be regarded as occupation in the particular context.
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> A further element is introduced into the problem when the business of one person consists of permitting others to use his property for their business purposes, so that in the result both exercise rights over the same property for the purposes of their own separate businesses. In some circumstances the landowner will remain in occupation of the whole even though his business consists of permitting others to come onto the property and use it temporarily for their business purposes. Instances are an hotel company which provides rooms and facilities once a month for an antiques fair, or a farmer who permits his fields to be used periodically for a car boot sale. At the other extreme are cases where the landowner permits another to enter and carry on his business there to the exclusion of the landowner. An instance would be a person who carries on a business of letting office accommodation. He acquires a lease of property, which he sublets.
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> Under the sublease he has the usual right as landlord to enter the sublet property for various purposes, and he derives financial profit from the property in the form of rent, but plainly he would not occupy the property.

To look for a clear line between these instances would be to seek the non-existent. The difference between the two extremes is a difference of degree, not of kind. When a landowner permits another to use his property for business purposes, the question whether the landowner is sufficiently excluded, and the other is sufficiently present, for the latter to be regarded as the occupier in place of the former is a question of degree. It is, moreover, a question of fact in the sense that the answer depends upon the facts of the particular case. The circumstances of two cases are never identical, and seldom close enough to make comparisons of much value.

The types of property, and the possible uses of property, vary so widely that there can be no hard and fast rules. The degree of presence and exclusion required to constitute occupation, and the acts needed to evince presence and exclusion, must always depend upon the nature of the premises, the use to which they are being put, and the rights enjoyed or exercised by the persons in question.

Since the question is one of degree, inevitably there will be doubt and difficulty over cases in the grey area. Where the permission takes the form of the grant of a tenancy, there will usually be little difficulty. Ordinarily the tenant entitled to exclusive possession of the offices or factory or shop will be the occupier, not the landlord. This will be so even though the lease reserves to the landlord the usual rights to enter and inspect and repair, and even though the lease contains a user covenant, strictly limiting the use which the tenant may make of the demised property. In such cases the property is occupied by the tenant because he has a degree of sole use of the property sufficient to enable him to carry on his business there to the exclusion of everyone else."

21. In **Ansa Logistics Ltd v Towerbeg Ltd [2012] EWHC 3651 (Ch)** Floyd J at paragraph 41 distinguished possession and occupation as legal concepts:

**[41]** Thus possession and occupation are separate legal concepts, although the distinction is "even to those experienced in property law, often rather elusive and hard to grasp": per Neuberger LJ, as he then was, in *Akici v LR Butlin Ltd* [2005] EWCA Civ 1296, [2006] 2 All ER 872, [2006] 1 WLR 201. It is clear, however, that for the purposes of a covenant such as that in the present case, the parting with possession must be complete. The acid test for possession, as contrasted with mere occupation, lies in the right of the person in occupation to exclude others, including the tenant, from the premises. In *Clarence House Ltd v National Westminster Bank plc* [2009] EWCA Civ 1311, [2010] 2 All ER 201, [2010] 2 All ER (Comm) 1065, [2010] 1

WLR 1216 at 1230, Ward LJ, with whom Jacob LJ and Warren J agreed said "The hallmark of the right to possession is the right to exclude all others from the property in question. That is the ordinary and normal sense of the word and that is the meaning which it should be given in this covenant."

22. In **Clarence House Limited v National Westminster plc (2010) 1EGLR 43** the court discussed the distinction between possession and occupation noting that possession is a wider concept which would include occupation with a view usually to the exclusion of others.

23. At paragraph 33 Ward LJ stated:

> [32] How are we to apply those principles to a consideration of the covenant in this case that is "not to share or permit sharing possession or occupation of the demised premises or any part thereof or part with possession or occupation of the same"? There is no question of sharing or parting with occupation: the case turns on possession. As I see it, the proper approach must be as follows:
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> (1) We must give possession the same meaning it bears in respect of sharing possession as it bears in respect of parting with possession.
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> (2) Because this is a common phrase in a standard alienation clause, "possession" must be given its *normal*, albeit also its technically legally correct meaning. The true meaning must take its colour from its context. Although "possession" and "occupation" are different concepts (the difference between the tenant and a licensee, such as the lodger) and although they must not be conflated as Judge Hodge said, nevertheless their juxtaposition is part of the context and serves to emphasise the aspect of physical control that is part of possession. As Lord Browne-Wilkinson pointed out in a different context in *JA Pye (Oxford) Ltd v Graham* [2002] UKHL 30; [2003] 1 AC 419, in [40]:
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> > (1) there are two elements necessary for legal possession: (1) a sufficient degree of physical custody and control ("factual possession"); (2) an intention to exercise such custody and control on one's own behalf and for one's own benefit ("intention to possess").

(2) Moreover, as Chadwick LJ said in *Manchester Airport plc v Dutton* [2000] 1 QB 133*, at p142B-C:

(3) possession is synonymous... with exclusive occupation that is to say occupation (or a right to occupy) to the exclusion of all others, including the owner or other person with superior title.

(4) The hallmark of the right to possession is the right to exclude all others from the property in question. That is the ordinary and normal sense of the word and that is the meaning that it should be given in this covenant.

(3) In the standard covenant against sharing or parting with possession, we should therefore adopt the standard strict meaning and find the breach of the covenant only against: (i) sharing possession if, by entering into this arrangement, NatWest has allowed New Liberty to enjoy joint possession of the demised premises with it; or (ii) parting with possession if, by entering into the virtual assignment, NatWest wholly ousted itself or completely excluded itself from the legal possession of the demised premises for all purposes.

(4) The short answer to the case is that at the time the virtual assignment was entered into, and at all material times thereafter, NatWest was not and has not itself been in possession of the demised premises. The demised premises are the suite of offices on the ground floor and first floor of this building in Clarence Street, Manchester. The occupier and person in possession is Mercers, not NatWest. By virtue of the underlease, NatWest had divested itself of possession and the only party in possession was, is and remains Mercers and Mercers alone. The virtual assignment did not alter that state of affairs. Not having been in possession of the premises, NatWest cannot possibly be said to have parted with possession to New Liberty or to have shared possession by reason of entering into these arrangements.

(5) There is a long line of authorities, now well established, dealing with breaches of the covenant against parting with or sharing possession. For example, *Stening* decided that a licence to erect an advertisement on the wall of premises did not constitute parting with possession of the wall. *Lam Kee Ying* held that the transfer to a newly formed company of the partnership business being conducted on the premises was a parting with possession. In *Akici*, allowing a third party into occupation to carry on business from the premises was a sharing of possession. This stream of cases is consistent with the notion that a leasehold covenant against parting with or sharing possession is concerned with the question of whether the tenant has allowed another into physical occupation with the intention

of relinquishing its own exclusive possession of the premises to that other. Consistency demands that this case be approached in that light and, in that light, there has been no breach of the covenant.

24. How then should the consent order/declaration be construed in relation to the issues in dispute? Applying and adapting these authorities to the present case, use and occupation must mean the use and occupation of the church and the half lot on which it stands for the purposes of the church. This must include the right to carry on its services in the way in which the members worship including all of the commemorations and rituals associated with the religion. This includes such services that are held at night. A neighbour of the church will, however, have all rights to assert his/her rights if any nuisance, as legally defined, is committed.

25. One of the concerns relates to the parking of vehicles in the small yard in front of the church. Under the terms of the order the claimant must have the entitlement to have the use and occupation of the yard. It is part of the half lot. For example, suppose a church function was being held. A vehicle parked in the front of the church (as shown in one of the photographs) would necessarily interfere with the use and occupation of the church's half lot. This therefore cannot continue.

26. Equally the defendant would not be entitled to use the front yard of the church without getting the consent of the church for putting up a tent or any structure or any like purpose. It may be unfortunate that the defendant has no place to park her vehicles, but this is just one of the consequences of the right of the claimant to the use and occupation of the half lot. This happens when you choose, as Samuel Toby did, to establish a church in the compound of his home.

27. In the context of this case and the background to the order, the claimant is entitled to use and occupy the half lot part of the premises for the business of the church. It is equally the case that the defendant is entitled to occupy the other half of the lot for her residence. Such occupation is necessarily exclusive except for the obvious need of the defendant and her lawful visitors to pass along the half lot to get to and from the defendant's home. The plan attached to the order was intended to define the area of the claimant's occupation.

28. However, there is a common gate which leads to both the church and the defendant's home. Access to and from the defendant's home does not, however, interfere with the use and occupation of the church. The defendant is understandably concerned about the safety of her property. In my view, a common sense solution to this issue would simply be to have a lock placed on the gate and to have designated church members and the defendant have keys for the lock. An arrangement can be worked out for a time for the gate to be locked. Obviously, if either party is holding a function then the gate can remain opened to facilitate this. I refuse to accept that the parties will be unable to co-operate to have this put into effect.

29. The next matter concerns construction on the property. It is clear from the order that the claimant is entitled to conduct any repairs and renovations to the church without the permission of the defendant once this does not relate to any extension to the square footage occupied by the church building. Further, the claimant was entitled to construct the mourning room as provided for in the order.

30. For any other construction to take place, the order requires that the claimant must seek the consent of the defendant and such consent must not be unreasonably withheld. In this regard, any attempt to construct a fence by the claimant without the consent of the defendant having been sought would be in breach of the order made in this matter.

31. The next matter concerns "loud noises" and the hours of the church. Different groups worship in different ways. Some faiths are more exuberant and vigorous in their modes of worship. That is an accepted norm in this country. It is also common that some religious groups use loud speakers during services, sometimes in fairly confined spaces. The use of such devices must, however, be done in a way that recognises the sensitivities and entitlement of others to also enjoy their living spaces in relative peace and quiet. It is equally bothersome in a residential area when a religious group plays music and praises God in a very loud manner as it is when a neighbour blasts music from a boom box or conducts the drilling of walls into the early hours of the morning. It is all in the ears of the beholder. Any of these incursions can cause annoyance especially to someone who is trying to sleep, rest or relax. Sounds are also far more noticeable in the dead of night. Balance and respect for the rights of others is essential. In an appropriate case, persistent loud noise making, especially at night time, can amount to nuisance and can give rise to a separate claim. There is not sufficient evidence before me, however, to conclude that such breaches have taken place up to now. But this is a matter which the claimant's members must be alive to especially in the somewhat unique circumstances where a church is being run in the same lot of land that others, who do not belong to the church, live.

32. The point this application has brought forward is the continuing need for the parties to co-operate in a civil manner. Neither is going anywhere. They will continue to occupy a small space. The solution cannot be to come to the court every time some minor disturbance occurs. This matter has occupied considerable court resources, engaged numerous lawyers, and resulted in several settlement attempts. No doubt the parties have spent a fair amount of money to litigate their claims.

33. An acknowledgement of each other's right to peacefully use and occupy its respective space and also for the defendant to pass through the gateway to get access to her premises will go far to upholding the consent/declaratory order of Stollmeyer J. The approach of

speaking to each other in a civil and neighbourly manner when incidents occur ought to be able to resolve any issues that may arise in the future. The solution can be summed up in the idea of mutual respect. This will also ensure the legacy of the church's founder will be continued.

34. Having regard to my findings, the application will be dismissed. In the interests of promoting goodwill among the members of the church and the defendant, and to encourage continuing dialogue, and so as not to further raise tensions, each party will bear its own costs. I thank the attorneys for their assistance throughout this matter.

Ronnie Boodoosingh

Judge