

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2015-00091**

**BETWEEN**

**SUNIL RAMSAMMY**

**Claimant**

**AND**

**VEDAWATIE NARINESINGH  
VARUN SATISH NARINESINGH**

**Defendants**

**Before the Honourable Mr. Justice Robin N. Mohammed**

**Date of Delivery: Wednesday 20 January 2021**

**Appearances:**

**Mr. Gerald Ramdeen and Ms. Dayadai Harripaul for the Claimant**

**Mr. Prem Persad Maharaj and Ms. Christine Dookinram Sahadeo for the Defendants**

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**DECISION ON THE CLAIMANT'S AMENDED NOTICE OF APPLICATION**

**FILED ON 7 FEBRUARY 2019**

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**I. Introduction**

[1] Engaging the Court's attention in the case at bar is an Application by the Claimant to vary a final consent order entered into between the parties on 16 February 2018.

**II. Factual Background**

[2] The Claimant was in occupation of All and Singular that certain piece or parcel of land situate in the Ward of Chaguanas in the Island of Trinidad measuring approximately one (1) Lot and five (5) Roods be the same more or less and bounded on the North by lands in the occupation of David Madhoo, on the South by a Road Reserve, on the East by lands in the occupation of Videartee Narinesingh and on

the West by lands in the occupation of Kushiali Rago together with the building standing thereon (“the said lands”).

- [3] The Claimant previously occupied the said lands since the year 1973 with his parents, who are now both deceased. His parents were the tenants of Narine Singh. Since their death, the Claimant maintained the tenancy with Narine Singh until his death in 2005.
- [4] The Defendant, Varun Satish Narinesingh is the grandson of Narine Singh and is represented by his lawful attorney Vedawatie Narinesingh.
- [5] The instant action was brought against the Defendant since his lawful Attorney stopped accepting rent in 2009, and in 2014, the Defendant’s lawful attorney entered the said lands, installed a new padlock on the gate, and erected a “No Trespassing” sign, thereby preventing the Claimant from further entering the said lands.
- [6] Accordingly, the Claimant brought the instant action seeking an order that he is inter alia a statutory tenant in accordance with the Land (Security of Tenure) Act 1961; and a declaration that he is entitled to the said lands.

### **III. Procedural Background**

- [7] The Claim Form and Statement of Case were filed on 12 January 2015. An Application without Notice was filed on even date seeking an Order that the Claimant was entitled to the said lands and an injunction restraining the Defendant from entering and remaining on the said lands.
- [8] The Defence by the lawful Attorney was filed on 9 February 2015, wherein it was admitted that the lawful Attorney took possession and control of the said lands and remained in control; and denied that the Claimant had any right, title or interest in the said lands.

- [9] The matter came up for hearing on numerous occasions with the matter having progressed to the point of a pre-trial date being fixed for 24 July 2015, and a tentative trial to be held in October 2015.
- [10] On 21 September 2015, the Court was informed by both sides that the Claim had been settled in principle but the dynamics of the settlement were being worked out. Directions were given for a valuation to be conducted by Charles B. Lawrence & Associates. The trial dates were vacated and a settlement conference was fixed for 11 December 2015.
- [11] On 29 January 2016, a fresh valuation was ordered to be carried out by Brent Augustus & Associates, with the costs being borne equally between the parties. On 29 April 2016, the Court was informed that the valuation process was not yet completed, as parties had not paid their part of the fees.
- [12] On 25 July 2016, the valuation report dated 19 July 2016 was referred back to Brent Augustus & Associates for a review on the basis that there was no Town and Country Planning Approval in relation to the said lands.
- [13] On the 14 October 2016, both parties requested in Court that the matter be adjourned pending settlement to 20 January 2017. On the latter date, Ms. Harripaul was ordered to report to the Court and to the Defendant's attorney at law her client's instructions in relation to the valuation report of Brent Augustus & Associates dated 2 October 2016. The matter was adjourned to 3 February 2017.
- [14] On 3 February 2017, the parties were ordered to seek to agree on proposed questions to be put to Brent Augustus & Associates in relation to the valuation report dated 19 July 2016, and the supplemental report as contained in the letter dated 2 December 2016. The Claimant was ordered to file the list of agreed and unagreed questions on or before 10 February 2017 for the Court's approval.

- [15] On 5 May 2017, by consent the questions contained in the request for information filed on 5 May 2017 were agreed as the questions to be referred to Brent Augustus & Associates for further information.
- [16] On 30 June 2017, the matter was adjourned to 28 July 2017 for entry of a final consent order.
- [17] On 25 July 2017, upon the request of the attorneys at law for both sides, the matter as fixed for 28 July 2017 was rescheduled to 16 October 2017. On 12 October 2017, upon the request of the attorneys at law, the matter fixed for 16 October 2017 was relisted to 24 November 2017.
- [18] On 15 January 2018, the matter was adjourned for a period of 2 weeks for the entry of a consent order; the pre-trial review was adjourned to 16 February 2018 for the entry of a consent order.
- [19] On 16 February 2018, a consent order was entered wherein it was agreed inter alia:
1. *The Claimant's claim is hereby compromised.*
  2. *Permission is granted to the Claimant to withdraw the action against the First Named Defendant with no order as to costs.*
  3. *The Second Named Defendant agrees to sell and the Claimant agrees to purchase for the sum of THREE HUNDRED AND FOUR THOUSAND DOLLARS (\$304,000.00) being seventy percent (70%) of the market value of the lands described as All and Singular that certain piece or parcel of land situate in the Ward of Chaguanas in the Island of Trinidad comprising FIVE HUNDRED AND SEVENTY EIGHT POINT ONE SQUARE METRES (578.1m<sup>2</sup>) be the same more or less and bounded on the North by Lot No. 1, on the South by Chin Chin Trace, on the East by Lot No. 2 and on the West by Lot*

*No. 1C which said parcel of land is known as Lot. No. 1D on the survey plan dated 20 October 2017.*

4. *The payment of the sum of THREE HUNDRED AND FOUR THOUSAND FIVE HUNDRED DOLLARS (\$304,500.00) is to be paid in the following manner:*
  - a. *The sum of THIRTY THOUSAND FOUR HUNDRED AND FIFTY DOLLARS (\$30,450.00) on or before the 29 March 2018;*
  - b. *The balance of the sum of TWO HUNDRED AND SEVENTY FOUR THOUSAND AND FIFTY DOLLARS (\$274,050.00) is to be paid on or before the 29 June 2018 with time to be deemed of the essence.*
5. *Upon payment of the balance of the purchase consideration the Second Named Defendant shall convey all his share and interest in the said parcel of land free from encumbrances to the Claimant.*
6. *The Claimant shall enter into possession of the subject lands only upon full payment of the purchase consideration.*
- ...
11. *In the event that the Claimant is unable to make the deposit by the stipulated date then the Second Named Defendant shall be free to retake possession of the subject property and the Sales Agreement entered by this Order shall be annulled and the Claimant shall have no right title or interest.*
12. *In the further event that the deposit is paid but the balance of purchase consideration is not paid, then in the absence of any mutual agreed time period extending the time for completion, the deposit shall be forfeited and the transaction annulled and the Second Named Defendant shall be free to sell the subject property to any prospective buyers.*

[20] On 8 May 2018, the Claimant filed a Notice of Application to extend time to pay the purchase price.

[21] The Defendant filed an affidavit in response on 3 July 2018.

- [22] At the hearing of the Application on 27 July 2018, it was adjourned pending the outcome of discussions between the parties on the issue of variation of the consent order and the issue of costs on the injunctive proceedings. The matter was fixed for 11 October 2018, but at the request of the attorneys at law for both sides, the matter was relisted for 21 January 2019. It was then relisted again to 8 February 2019.
- [23] The Claimant filed an Amended Notice of Application on 7 February 2019. On 8 February 2019, the Court ordered that any response to the Amended Notice of Application be filed and served on or before 11 March 2019, and granted permission to the Claimant to file and serve a Reply affidavit to new matters raised on or before 18 March 2019.
- [24] On 18 March 2019, the Court in Chamber made an order that the time for the Defendant to file and serve a response affidavit to the Claimant's Amended Notice of Application be extended to 25 March 2019. Time was also extended for the Claimant to file and serve his response affidavit to 5 April 2019.
- [25] The Defendant filed an affidavit in response on 25 March 2019. The Claimant filed a Reply affidavit on 15 April 2019.
- [26] On 8 July 2019, the Court ordered written submissions to be filed and served with authorities on or before 9 September 2019; each party being permitted to file and serve reply submissions on law only on or before 23 September 2019.
- [27] The Defendant filed written submissions on 9 September 2019. The Claimant filed written submissions on 10 October 2019.

**The Claimant's Notice of Application filed on 8 May 2018**

- [28] The main ground of the Application was that the lawful Attorney had not provided the approved survey plan to the Claimant, which approval was required by Republic

Bank Limited for the Claimant to obtain the loan applied for to purchase the said lands.

**The Claimant's Amended Notice of Application filed on 7 February 2019**

- [29] The Claimant applied under the inherent jurisdiction of the Court and under the 'liberty to apply' for an Order that the Defendant deliver the following documents:
- a) Copies of the death certificates of Kimraj Narinesingh, Samdaye Singh, Narine Singh and Janak Singh.
  - b) Confirmation by way of documentary evidence that Janak Singh is also known as Janak Narinesingh since he is referred to in Deed registered as Deed No. 7854 of 1962 as rectified by Deed registered as No. 1046 of 1963 as "Janak Singh" however in the Letters of Administration dated 17 November 2006 he is referred to as "...Janak Narinesingh otherwise Janak K. Narinesingh otherwise Janak Karan Narinesingh."
  - c) Photocopies of two (2) forms of identification for the Vendor (one of which should be his passport).
  - d) The original survey plan dated and signed by Indar Rago, Licenced Land Surveyor for Lot 1D and shown pink for annexure to the Deed of Conveyance.
  - e) The original general plan showing exact measurements of the parent parcel known as Lot 1 dated and signed by the Licenced Land Surveyor for annexure to the Deed of Conveyance or if already annexed to the Deed the registration details for same.
  - f) An up-to-date letter from the Licenced Land Surveyor confirming that Lot 1D is derived from Lot 1 as identified on the plan annexed to and described in Deed registered as No. DE2007 030228 44D001 and that the said Lot 1 is derived from a larger parcel of land comprising 4 acres 1 rood and 2 perches as described in Deed registered as Deed No. 7854 of 1962 as rectified by Deed registered as No. 1946 of 1963.
  - g) A copy of the survey plan submitted with the Town and Country Planning Division Notice of Grant of Permission to Develop Land Subject to Conditions as Application No. T5D:1719/2016.

[30] Having paid the deposit on 4 October 2018, the Claimant also sought an Order that he be allowed to pay the remainder of the purchase price within three (3) months from the date of receipt of all documents requested; and that upon payment of same the Defendant do remove the padlock and chains on the gate of the said lands; that the sanctions imposed at paragraph 11 of the consent order dated 16 February 2018 be suspended and thereafter be resumed upon the determination of the Application; and that the Defendant do pay the costs of this Application to be assessed by the Registrar in default of agreement.

[31] The grounds of the Application can be summarised as follows:

- (i) Prior to the entering of the consent order on 16 February 2018, the Claimant made an application for a loan to Republic Bank Limited 51-59 Tumpuna Road, Arima in order to purchase the lands.
- (ii) On 16 February 2019, the lawful Attorney indicated to Attorneys at Law on both sides that she is in possession of the approved survey plan for the said lands and same would be provided to Attorney at Law for the Claimant by 19 February 2019. On 21 February 2019, Mr. Khan, clerk to the Defendant's attorney at law, emailed a copy of the unapproved survey plan. Despite speaking to Mr. Khan, and contacting the office of the Defendant on numerous occasions, the approved survey plan was not received.
- (iii) The Claimant was informed by the loans officer that for him to obtain the loan to complete the transaction the bank also requires approval of the building that is standing on the said lands. In order for the Claimant to obtain the necessary approvals for the building, a copy of the approved survey plan must be submitted with the application.
- (iv) By letter dated 19 March 2018, in response to letter of the Defendant's attorney at law dated 12 March 2018, the latter was informed that the Claimant requires the approved survey plan in order to obtain approvals and complete the transaction.

- (v) On 27 July 2019, at the hearing of the Notice of Application the parties entered into an agreement whereby the Claimant agreed inter alia the following:
- a. The Claimant would be responsible for getting all the necessary approvals for the said lands from both the local health authority and the Chaguanas Borough Corporation;
  - b. To pay the full purchase price as agreed in the Order dated 16 February 2018 within one (1) week before the next date of hearing. The matter was fixed for hearing on 12 October 2018.
- (vi) On 4 October 2018, the Claimant paid the deposit. By letter dated 4 October 2018, the Claimant informed the Defendant's attorney at law that due to constraints at the Land Registry the Claimant was still in the process of obtaining the full mortgage and requested a one (1) month extension to pay the balance of the purchase price.
- (vii) By letter dated 4 October 2018 sent to the Defendant's attorney at law certain documents were requested from the Defendant from Attorneys at Law for Republic Bank Limited, Ms. Daniela Taklalsingh. Attorney at law for the Claimant was not copied, but subsequently received a copy of same. Some of the documents were in the possession of the Claimant and others in the Defendant's possession.
- (viii) Attorney at law for the Claimant wrote to attorney at law for the Defendant on 23 and 29 November 2018 requesting the documents to forward to Republic Bank Limited.
- (ix) By letter dated 29 November 2018, Attorney at Law for the Defendant indicated that an Agreement for Sale had been prepared and attached. The Agreement stipulated that the completion date was 10 December 2018, and if the sale was not completed by the said date the parties are to jointly obtain a new valuation of the said lands. The letter stated that he was instructed that the requested documents were to be kept in his chambers and would be delivered to attorney at law for the Claimant in exchange for a signed Agreement.

- (x) Attorney at law for the Claimant again wrote to attorney at law for the Defendant on 4 December 2018 requesting the documents and reiterated that the documents were necessary for the Claimant to obtain the loan to pay the balance of the purchase price and to comply with the order of the Court. No response was forthcoming.
- (xi) Attorneys at law for Republic Bank Limited again requested the documents by letter dated 11 January 2019.
- (xii) By letter dated 28 January 2019, attorney at law for the Defendant wrote to attorney at law for the Claimant indicating that the Defendant would be enforcing clause 12 of the consent order.
- (xiii) On 15 January 2019, the Claimant obtained final approval from the Chaguanas Borough Corporation.

[32] The Claimant's affidavit in support is in the same terms as the Notice of Application, and so there is no need to detail same.

Defendant's affidavit in response to the Amended Notice of Application

[33] The Defendant stated that the two Applications by the Claimant arose as a result of prolonged delay by the Claimant in having the ability to source the funds to purchase the subject property.

[34] At the time of entering into the consent order, the Claimant accepted the subject lands in what was the present state that is, not having residential approval for building but was located in a residential area capable of being approved.

[35] The agreement of 27 July 2018 was yet another opportunity given to the Claimant to correct the delay in complying with the Court order but without prejudice to the compromise agreement. At this date, the Claimant had not paid the deposit, which shows a delay on his part. By letter dated 1 May 2018, the Defendant also had to write to ask for the sum of \$1406.25 being the Claimant's share owing to Brent Augustus & Associates.

[36] The agreement of 27 February 2018 also included an agreement that the Claimant would undertake the construction of a concrete drain and clean the said lands. The lawful Attorney unlocked the gate and opened the said lands to facilitate same. In August 2018, the drain had not begun, which was another delay by the Claimant, and time was running out for the Claimant to pay one week before 12 October 2018.

[37] Based on the Claimant's letter of 4 October 2018, the Defendant and his lawful attorney became worried that the Claimant still needed documents to complete his transaction with the Bank. As such an agreement was generated to give the Claimant limited time to complete, making time of the essence and forfeiture and as an alternative to forfeiture that due to the prolonged delay in completing for the land to be revalued and for the Claimant to pay the sum of 70% of the new valuation figure if he could not complete by 10 December 2018.

[38] The lawful Attorney admits that it was in these circumstances the documents were being withheld as she wanted a condition placed that if time went beyond 10 December 2018, the purchase price was to be renegotiated based on an updated valuation.

#### **IV. Submissions**

##### Claimant's submissions

[39] The counsel for the Claimant stated the issues for determination as:

- 1. Whether the Court has jurisdiction to vary the time period stipulated at paragraph iv (b) of the consent order entered on 16 February, 2018 to extend the time for the Claimant to comply with the terms of the order to pay to the Defendant the balance of the purchase price.*
- 2. If the Court determines that it has jurisdiction whether that jurisdiction should be exercised having regard to the circumstances of this case.*

[40] As it relates to issue 1, counsel referred the Court to the case of **Ropac Ltd v Inntrepreneur Pub Co. (CPC) Ltd**<sup>1</sup> where Neuberger J stated:

*“To my mind, the CPR therefore gives the court rather more wide-ranging, more flexible powers than the RSC. In my judgment, those powers are to be exercised not merely to do justice between the parties, but in the wider public interest. Further, the objective to deal with a case justly must, as I see it, sometimes (albeit rarely) require the court to override an agreement made between the parties in the course of, and in connection with, the litigation. I consider that this means that the court has greater power to interfere than before. Having said that, I should add this. Where the parties have agreed in clear terms on a certain course, then, while that does not take away its power to extend time, the court should, when considering an application to extend time, place very great weight on what the parties have agreed and should be slow, save in unusual circumstances, to depart from what the parties have agreed.”*

[41] He also referred the Court to **Pannone v Aardvark Digital Ltd**<sup>2</sup> where Lord Justice Tomlinson stated at paragraph 38 *“...that there is a power of the Court to extend the time specified in a consent order, however that power is not limited in any prescriptive way by reference to the existence of “unusual circumstances.”*

[42] He submitted that under the **Civil Proceedings Rules 1998 (as amended)** (“the CPR”) the jurisdiction of the Court to extend time to comply with a consent order is founded upon the discharge of the overriding objective to deal with cases justly. The grant of the extension of time is dependent upon the necessity to do justice between the parties.<sup>3</sup>

[43] He concluded that the Court has the jurisdiction from **CPR Parts 1 and 25** to vary an order made by consent by the parties.

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<sup>1</sup> [2001] CP Rep 31 Ch D para 31

<sup>2</sup> [2011] EWCA Civ 803

<sup>3</sup> Safin (Furescroft) Ltd v Estate of Dr. Said Ahmed Said Badrig (deceased) [2015] EWCA Civ 739

[44] In relation to issue 2, he referred the Court to the decision of Mendonca JA in **Leo Abrahams v Doll Basdeo**:<sup>4</sup>

*“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).”*

[45] Counsel submitted that the Court ought to look at the nature of the Claim filed, the conduct of the Defendant and the prejudice to the Claimant, which shows that the Amended Notice of Application should be granted.

Defendant's submissions

[46] Defence counsel referred the Court to the judgment of **Michael Perez v Buddie Miller & Anor**,<sup>5</sup> on the inherent jurisdiction of the Court, and concluded that the inherent jurisdiction of the Court may be invoked under **Parts 1, 26 and/or 44 of the CPR**, and from the Amended Notice of Application, the Claimant failed to come under any specific rule to invoke this inherent jurisdiction, and it ought not to succeed.

[47] The Court was also referred to the judgment of **Kisundaya Soogrim v Indar Singh**.<sup>6</sup> The counsel submitted that the consent order was a final order, which seeks to bring the matter to an end.

[48] Counsel submitted that the Court has to determine whether the actions of the Defendant can be interpreted as a “mere change of heart” or whether the Defendant is justified in his actions of withholding certain documents and requesting the

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<sup>4</sup> Civil Appeal No. 74 of 2012

<sup>5</sup> CV2009-02764

<sup>6</sup> CV2015-03713

Claimants to sign a new agreement for sale of the property at 70% of an updated valuation. Further, the Court has to determine whether the reliefs sought by the Claimant are justified in the circumstances.

[49] On the issue of time being of the essence, the Defendant referred the Court to the decision of **Vishnu Chatlani & Anor v L.A. Fortresse Company Limited & Anor.**<sup>7</sup>

[50] Counsel submitted that the Court should be slow to interfere with the consent order, and in the circumstances, refuse the reliefs sought by the Claimant.

## V. Issues

[52] The issues arising for determination by this Court are as follows:

1. **Does the Court have the jurisdiction to vary the consent order dated 16 February 2018?**
2. **If yes, are there circumstances existing to justify the Court exercising its discretion to grant the variation sought by the Claimant?**

## VI. Law and Analysis

**Issue 1: Does the Court have the jurisdiction to vary the consent order dated 16 February 2018?**

[53] As it relates to the inherent jurisdiction of the Court, **Halsbury's Laws of England** provides:

*“Unlike all other branches of law, except perhaps criminal procedure, there is a source of law which is peculiar and special to civil procedural law and is commonly called the 'inherent jurisdiction of the court'. In the ordinary way, the Supreme Court, Court of Appeal, and the High Court, are superior courts and as such no matter is deemed to be beyond their jurisdiction (including the general administration of justice within their territorial limits, and powers in all matters of substantive law) unless it is expressly shown to be so. The County*

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<sup>7</sup> CV2010-2764

*Court, although an inferior court, also has an inherent jurisdiction to regulate its own procedures, provided that the exercise of this power is not inconsistent with statute or statutory rules.*

*The jurisdiction of the court which is comprised within the term 'inherent' is that which enables it to fulfil, properly and effectively, its role as a court of law. However, the term 'inherent jurisdiction' is not used in contradistinction to the jurisdiction of the court exercisable at common law or conferred on it by statute or rules of court, and a claim should be dealt with in accordance with the rules of court rather than by exercising the court's inherent jurisdiction where the subject matter of the claim is governed by those rules. Even in an area which is not the subject of statute or statutory procedural rules, the court's inherent jurisdiction to regulate how proceedings should be conducted is limited because (subject to certain established and limited exceptions) the court cannot exercise its power in such a way as will deny parties their fundamental common law right to participate in the proceedings in accordance with the common law principles of natural justice and open justice.*

*In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine, and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent vexation or oppression, to do justice between the parties and to secure a fair trial between them.”<sup>8</sup> [Emphasis mine]*

[54] It is trite law that the Court has an inherent power to do justice between the parties to litigation. Following the advent of the **CPR**, this power has been retained and highlighted by the overriding objective to deal with cases justly.

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<sup>8</sup> Volume 11 (2020)

[55] As it relates to the CPR, **Ropac** (supra) is instructive. In this case, a party to a consent order requiring payment of a sum within a specified period in default of which possession of a property would be surrendered, appealed against a possession order and sought, inter alia, an extension of time within which to comply with the consent order. Time was made of the essence and the parties were granted liberty to apply.

[56] Neuberger J stated at paragraph 17:

*“17. As a matter of language, one can see how it can be said, particularly in light of the terms of the order and the title of Part 3 of the CPR (“The Court’s Case Management Powers”), that extending time under an order such as that of December 2, even if it were not by consent and did not provide that time is to be of the essence, is not within the ambit of Part 3 . However, I have reached the clear conclusion that the court’s case management powers do extend to such a power. **First, it seems to me that the natural reading of rule 3.1(2)(a) and rule 3.9(1) is that, while the draftsman of the CPR may not have had in mind specifically a case such as this, the rules extend to it. Secondly, it would be very surprising if the court did not have power to extend time under an order such as this, ignoring for the moment the fact that the order is by consent and time is of the essence. If the court ordered that a litigant had to do something by a certain date, failing which its claim or defence would be struck out, and, as he left court, the litigant had an accident which rendered him incapable of doing anything for the relevant period, it would be most unsatisfactory if the court simply had no power to extend time. Thirdly, the court’s case management powers, like all the other provisions of the CPR, have to be read in the light of the overriding objective; in that connection, the provisions of rule 1.2 are too well known for me to have to set them out. If the court had no power to extend time under an order such as that in the present case, ignoring, for the moment, that it was by consent and time was of the essence, it would scarcely comply with the overriding objective. Fourthly, there is no doubt that the court would have had power to extend time in relation to the December 2, 1988 order (if it***

*had not been by consent) under the RSC, see the provisions of RSC Order 3, rule 5. It would be surprising if the more flexible of powers intended to be given to the court under the CPR resulted in the court now being powerless in relation to such an important aspect of its jurisdiction under the CPR.”*

[Emphasis mine]

[57] He continued at paragraph 31:

*“31. To my mind, the CPR therefore give the court rather more wide-ranging, more flexible powers than the RSC. In my judgment, those powers are to be exercised not merely to do justice between the parties, but in the wider public interest. Further, the objection to deal with a case justly must, as I see it, sometimes (albeit rarely) require the court to override an agreement made between the parties in the course of, and in connection with, the litigation. I consider that that means that the court has greater power to interfere than before. Having said that, I should add this. Where the parties have agreed in clear terms on a certain course, then, while that does not take away its power to extend time, the court should, when considering an application to extend time, place very great weight on what the parties have agreed and should be slow, save in unusual circumstances, to depart from what the parties have agreed.”* [Emphasis mine]

[58] **Rule 3.1(2)(a) in the English CPR** is similar to **Rule 26.1(1)(d) of the CPR** in this jurisdiction:

*“Court’s general powers of management*

*26.1 (1) The court (including where appropriate the Court of Appeal) may—*

*...(d) extend or shorten the time for compliance with any rule, practice direction or order or direction of the court;”*

[59] The English CPR in addition, provides that time may be extended or shortened, *“even if an application for extension is made after the time for compliance has expired.”*

[60] I do not propose to hold the **CPR** in this jurisdiction to ransom on account that they do not contain a similar proviso. I agree with the English Courts that the CPR, even in this jurisdiction provide a more flexible approach to Courts managing cases. What is necessary is the Court looking at all the circumstances of the case before it to determine whether the application for extension, even if made after the time for compliance has expired, is justified in the circumstances. I refuse to hold that the drafters of the **CPR** in this jurisdiction sought to create a more flexible approach than once was under the **RSC**, while simultaneously severely restricting the Court's ability to deal with applications made outside the time for compliance. All Rules contained in the CPR are subject to the overriding objective and the Court must deal with cases justly.

[61] The decision in **Ropac** was approved by the Court of Appeal in **Pannone v Aardvark Digital Ltd.**<sup>9</sup>

[62] Tomlinson LJ stated in **Pannone**:

*“32. The presence of “unusual circumstances” is plainly not a prerequisite of the jurisdiction to extend time or to grant relief, which is expressed in the **CPR** in general terms. In the Ropac case [2001] L & TR 93 Neuberger J was, if I may respectfully so put it, feeling his way in the light of the newly introduced procedural code, and he was certainly not, I think, intending to formulate a rule as to the circumstances in which an extension of time might be granted in the face of a consent order. I think he meant no more than to emphasise that appropriate weight should be given to the parties' agreement.”*  
[Emphasis mine]

[63] Lloyd LJ in concluding that the Court does have the power to extend time in a consent order stated:

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<sup>9</sup> [2011] 1 W.L.R. 2275

*“38. Nevertheless the appeal does provide an opportunity for this court to hold that there is such a power, and it is appropriate that we should take that opportunity. Nor is that power limited in any prescriptive way by reference to the existence of “unusual circumstances”. The fact that the order was made by agreement is one of the circumstances of the case to which the court is to have regard under rule 3.9, and it may be an important factor, but it is not inherently decisive, so as to render it unnecessary and irrelevant to examine the other relevant circumstances.”* [Emphasis mine]

[64] Both **Ropac** and **Pannone** were considered in this jurisdiction in the consolidated appeal of **Colonial Life Insurance Company (Trinidad) Limited v Darryl Arthur Goede & anor.**<sup>10</sup> Jones JA (as she then was) agreed with the words of Tomlinson LJ in **Pannone** at paragraph 33 of his judgment:

*“33. In my view the weight to be given to the consideration that an order is agreed will vary according to the nature of the order and thus the agreement. Where the agreement is the compromise of a substantive dispute or the settlement of proceedings, that factor will have very great and perhaps ordinarily decisive weight, as it did in *Weston v Dayman* [2008] 1 BCLC 250, which was not in any event concerned with an application to extend time. Where however the agreement is no more than a procedural accommodation in relation to case management, the weight to be accorded to the fact of the parties' agreement as to the consequences of non-compliance whilst still real and substantial will nonetheless ordinarily be correspondingly less, and rarely decisive. Everything must depend on the circumstances...”* [Emphasis mine]

[65] Based on the learning above, I am satisfied that this Court *does* have the power to vary the consent order entered on 16 February 2018. This is so regardless of the condition that time was of the essence.

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<sup>10</sup> Civil Appeal No. 168 of 2011

[66] My satisfaction is bolstered by the decision of Kokaram J (as he then was) in **Kisundaya Soogrim** (supra):

*“31. The Court retains a wide jurisdiction to work out the mechanics of its orders. See Note 30.9 Caribbean Civil Practice 2011 and Chaggar v Chaggar [2002] EWCA Civ 1637. It is clear by this consent order that the necessity for subsequent applications were foreseen by the parties expressly reserving a “liberty to apply”. This declaration permits persons having an interest under the judgment to apply to the Court touching their interest in a summary way without setting the case down. While the Court would not have the jurisdiction to alter or vary rights accrued under the order it retains the jurisdiction to deal with matters which arise in working out the order or varying its terms where there is a change in circumstances. See Poisson and Woods v Robertson and Turvey (1902) 50 WR 260 CA. Cristel v Cristel [1951] 2 KB 725 and Halsbury Laws of England paragraph 1602 VOL 12 A. Although Cristel dealt with matrimonial proceedings, the principle that a court can vary the terms of a consent order in limited circumstances is of general application. It also accords with the wide discretion of the Court under the CPR as discussed in Roper (Ibid). In Cristel, in addressing the scope of the express liberty to apply, Sommervell LJ stated at 728 that:*

*“Liberty to apply” is expressed, and if not expressed will be implied, where the order drawn up is one which requires working out, and the working out involves matters on which it may be necessary to obtain the decision of the court. Prima facie, certainly, it does not entitle people to come and ask that the order itself shall be varied.”*

*Denning LJ further went on to say at 731 that-*

*“If there were an unforeseen change of circumstances, for instance, if the wife were left by will another house, or if she took an adulterer to live with her in this house, I should have thought that the ‘Liberty to apply’ would enable the court to remedy the position.” [Emphasis mine]*

[67] The issue next for determination by the Court is whether I should vary the consent order based on all the circumstances of the case.

**Issue 2: Issue 1 having been resolved in the affirmative, should the Court vary the consent order dated 16 February 2018 as sought by the Claimant?**

[68] Following the learning in **Pannone** adopted in this jurisdiction, I propose to begin by determining whether *the agreement is the compromise of a substantive dispute or the settlement of proceedings, in which case that factor will have very great and perhaps ordinarily decisive weight*. From the outset, even if I conclude that it was a compromise of the substantive proceeding, this does not automatically mean that I am bound to leave the consent order as is, as my decision must be based on all the circumstances.

[69] The first clause of the consent order states:

*“That the Claimant’s claim is hereby compromised.”*

[70] Without more, I can conclude that the consent order represented a conclusion of the matter. However, I believe that the consent order must be looked at as a whole before coming to any conclusion.

[71] The main circumstance, which must be considered, is delay and whether the delays, which have occurred in this matter, are reasonable and justified. The Court will take a chronological look at the issue of delay from the date of the consent order, that is 16 February 2018.

[72] The Claimant’s Application to extend time for payment was made on 8 May 2018. The main reason for this application was the need to source the approved survey plan and obtain approval for the building on the said lands. At the hearing on the 27 July 2018, the parties agreed that the Claimant would be responsible for getting all necessary approvals for the said lands from both the local heath authority and the Chaguanas Borough Corporation; and to pay the full purchase price within one week of the next date of hearing.

- [73] The Claimant thereafter paid the deposit on 4 October 2018, which was acknowledged by the Defendant on 11 October 2018.
- [74] On the 4 October 2018, attorneys at law for Republic Bank Limited requested 13 documents from the Defendant's attorney at law.
- [75] In October 2018, the Claimant delivered to the Bank the Certificate of Assessment and WASA Clearance, which were requested from the Defendant, but was in the possession of the Claimant.
- [76] On 23 and 29 November 2018, the Claimant's attorney at law wrote to the Defendant's attorney at law seeking documents as requested by the Bank.
- [77] On 29 November 2018, the Defendant's attorney at law wrote to the Claimant's attorney at law attaching an Agreement for Sale. The Defendant's attorney at law stated in his letter that the documents requested by the Bank are at his chambers but that he has been instructed to keep same in his possession, to be delivered in exchange for the signed Agreement for Sale. In the Agreement for Sale, it was stated at Clause 1 that the requested documents are outstanding at the time of execution of the said Agreement.
- [78] On 4 December 2018, attorney at law for the Claimant wrote to the Defendant's attorney at law reiterating that the requested documents were needed for the Claimant to obtain the loan.
- [79] On 11 January 2019, the attorneys at law for the Bank wrote to the Defendant's attorney at law again requesting the documents.
- [80] On 28 January 2019, the Defendant's attorney at law wrote to Claimant's attorney at law stating that the Defendant would be enforcing Clause 12 of the consent order.

- [81] On 15 January 2019, the Claimant received final approval from the Chaguanas Borough Corporation, which was forwarded to the Bank.
- [82] On 7 February 2019, the Claimant filed his Amended Notice of Application, seeking inter alia to have the Court order delivery of the requested documents.
- [83] On 17 June 2019, the Claimant agreed to a new valuation being conducted if the balance of the purchase price was not paid within three (3) weeks from receipt of the requested documents.
- [84] The consent order pertains to the sale of a parcel of land for which the Claimant is seeking a mortgage. This was known by the Defendant, and it is more likely that the Defendant understood that in the Claimant obtaining a mortgage, there would be pre-conditions to be met by the Claimant before obtaining the mortgage. This is supported by the fact that the Claimant requested documents from the Defendant for the Bank, as well as the Bank seeking to obtain documents from the Defendant's attorney at law. Nowhere in pleadings or evidence has the Defendant indicated that he was unaware of what a mortgage entailed or that he did not know that he would be required to provide certain documents in order for the Claimant to obtain the mortgage.
- [85] This Court in looking at the consent order as a whole, must ascribe a meaning to reflect the intention of the maker(s) of the document, and to do so the Court must look at the ordinary meaning of the order.
- [86] The consent order at clause 3 provides that, "*The Second Named Defendant agrees to **sell** and the Claimant agrees to **buy**...*"
- [87] It is conveyancing practice in this jurisdiction that in any agreement for the sale of property, documentary evidence of varying types must be provided based on the nature of the transaction to be conducted.

- [88] Inherent therefore in the consent order for the sale of the said lands, is an understanding that for the completion of the transaction, there must be documentation provided. The documentation to be provided becomes more onerous once a mortgage facility is sought.
- [89] The documents requested by the Bank for completion of the mortgage are in no way exhaustive. All the documents requested go towards proving that the Defendant's title is without question. Further, the documents, which were in the Claimant's possession were delivered to the Bank.
- [90] To date, the documents in the Defendant's possession have not been provided by the Defendant, who is holding same to ransom.
- [91] By his affidavit dated 7 February 2019, the Claimant explained that due to delays at the Land Registry, the Bank was unable to obtain the searches for the said lands and the loan was not processed. However, he obtained a personal loan from which the deposit was paid on 4 October 2018.
- [92] The lawful Attorney for the Defendant admitted in her affidavit dated 25 March 2019, that together with the Defendant they made a conscious decision to withhold the documents as requested by both the Bank and the Claimant unless and until the Claimant agreed to sign the Agreement for Sale. This was due to what they deemed delays by the Claimant in complying with the consent order.
- [93] Based on the chronological events above, and the evidence presented by the Claimant, this Court is not of the impression that the Claimant has unreasonably or intentionally sought to delay the process of purchasing the said lands, and by extension purposely failing to comply with the consent order.

- [94] The Claimant has complied with the agreement between himself and the Defendant to receive permission from the Corporation, and has also delivered to the Bank the documents in his possession to have the loan application processed.
- [95] This Court cannot hold the Claimant liable for a breach of the consent order, in circumstances where he had no control of the loan facility he was seeking. In fact, the Claimant continuously brought to the attention of the Defendant what was occurring. He even obtained a personal loan to pay the deposit while the loan application was delayed.
- [96] The Bank wrote to the Defendant requesting documents in October 2018. The Claimant brought his Amended Application in February 2019. Four months after the documents were requested on numerous occasions, the Defendant still had not provided them out of a conscious decision not to do so.
- [97] Even after the Claimant agreed to a new valuation on condition, the Defendant still did not provide the requested documents.
- [98] In the circumstances, the Court is of the impression that the conduct of the Defendant has been to frustrate the outcome of the instant matter. Had the Defendant provided the documents, which only he can provide to the Bank, it is reasonable to conclude that the Bank would have processed the loan application and a determination on whether the Claimant was entitled to the mortgage would have been made.
- [99] Even during the period while awaiting the decision of this Court, it was always open to the Defendant to provide the requested documents. The Defendant's failure to provide the requested documents has undeniably led to significant delay in the Bank processing the loan application.

- [100] It was always clear to the Defendant that the Claimant's purchasing of the said lands was dependent on him receiving the loan.
- [101] While the Claimant did not comply with payment as contained in the consent order, he has provided evidence to show that it was out of his control.
- [102] The Defendant in wanting a strict application of the consent order, failed to acknowledge the process involved in a conveyancing transaction or was not made aware of it by his attorney at law.
- [103] This Court cannot apply a strict ruling for the Claimant to comply with the consent order, in circumstances where the Defendant has frustrated the conveyancing process.
- [104] Further, in looking at prejudice, the Defendant has not provided any evidence to show that failure of the Claimant to abide by the consent order has resulted in any prejudice to him. No evidence was provided to show that there are other buyers, or that he has suffered loss as a result of the transaction not being completed.
- [105] In fact, owing to all that the Claimant has done, there would be prejudice to him, should the Court not grant an extension of time.
- [106] In the circumstances, having regard to the wilful delay by the Defendant, and the justified reasoning of the Claimant in not complying with the consent order, I rule that the time for payment of the remaining purchase price ought to be extended by this Court, thereby varying the time provided for in the consent order.
- [107] Finally, I am satisfied that by varying the consent order, I am doing what is necessary for the "working out" of the said consent order.

## **VII. Disposition**

Given the reasoning, analyses and findings canvassed above, the Order of the Court is as follows:

### **ORDER**

- 1. The Claimant's Amended Notice of Application filed on 7 February 2019 be and is hereby granted in the terms stated hereunder in this order.**
- 2. That the Defendant do deliver to Attorney at Law for the Claimant within forty-two (42) days from the date hereof the following documents:**
  - i. Copies of the death certificates of Kimraj Narinesingh, Samdaye Singh, Narine Singh and Janak Singh;**
  - ii. Confirmation by way of documentary evidence that Janak Singh is also known as Janak Narmesingh since he is referred to in Deeds registered as Deed No 7854 of 1962 as rectified by Deed registered as No. 1946 of 1963 as "Janak Singh" however in the Letters of Administration dated 17<sup>th</sup> November 2006 he is referred to as Janak Narinesingh otherwise Janak K. Narinesingh otherwise Janak Karan Narinesingh;"**
  - iii. Photocopies of two (2) forms of identification for the Vendor (one of which should be his passport);**
  - iv. The original survey plan dated and signed by Indar Ragoo, Licenced Land Surveyor for Lot 1D delineated and shown pink for annexure to the Deed of Conveyance;**
  - v. The original general plan showing exact measurements of the parent parcel known as Lot 1 dated and signed by the Licenced Land Surveyor for annexure to the Deed of Conveyance or if already annexed to a Deed the registration details for same;**
  - vi. An up to date letter from the Licenced Land Surveyor confirming that Lot 1D is derived from Lot 1 as identified on the plan annexed to and described in Deed registered as No. DE2007 030228 44D001 and that the said Lot 1 is derived from a larger parcel of land**

comprising 4 Acres 1 Rood and 2 Perches as described in Deed registered as Deed No. 7854 of 1962 as rectified by Deed registered as No. 1946 of 1963;

vii. A copy of the survey plan submitted with the Town and Country Planning Division Notice of Grant of Permission to Develop Land Subject to Conditions as Application No. T5D:1719/2016.

3. That the Claimant do pay to the Defendant the sum of Two Hundred and Seventy Four Thousand and Fifty Dollars (\$274,050.00) representing the balance of the purchase price for the parcel of land situate in the Ward of Chaguanas in the island of Trinidad comprising Five Hundred and Seventy-Eight Point One square metres (578.1m<sup>2</sup>) be the same more or less and bounded on the North by Lot No. 1, on the South by Chin Chin Trace, on the East by Lot No. 2 and on the West by Lot No. 1C which said parcel of land is known as Lot No. ID on the survey plan dated 20<sup>th</sup> October, 2017 (the said lands) within ninety (90) days from the date of receipt of all documents referred to in clause 2 of this order above.
4. That upon receipt of the payment of the balance of the purchase price the Defendant do remove the padlock and chains on the gate of the said lands.
5. That the sanctions imposed at paragraph 11 of the Consent Order dated 16<sup>th</sup> February, 2018 be suspended and thereafter be resumed should the Claimant fail to pay the balance of the purchase price within the stipulated time in clause 3 of this order above.
6. That the parties do address the Court on the entitlement and quantification of costs in relation to the Claimant's Amended Notice of Application filed on 7 February 2019.

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**Robin N. Mohammed**  
**Judge**

**The parties having addressed the Court on the issue of costs of the said application immediately after the decision was delivered, the following order is made:**

- 7. The Defendants shall pay 40% of the costs of the Claimant's Amended Notice of Application filed on 7 February 2019, to be assessed in accordance with CPR Part 67.11, in default of agreement.**
- 8. In the event there is no agreement, then the Claimant's attorney to file and serve a Statement of Costs for assessment on or before 10 February 2021.**
- 9. Thereafter, the Defendants' attorney to file Objections to items on the Statement of Costs on or before 24 February 2021.**
- 10. Assessment of costs to be dealt with without a hearing and the decision on quantification to be delivered on a date to be announced.**

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**Robin Mohammed  
Judge**