



[2013] JMSC CIV 21

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2012 HCV 05309

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| BETWEEN | HUAWEI TECHNOLOGIES JAMAICA COMPANY LIMITED | CLAIMANT |
| AND | MERVIN MORANT | DEFENDANT |

Peter Gaye Manderson instructed by John G. Graham & Company for Claimant

Defendant not present or represented

**Fixed Date Claim- Enforcement of Court Order –
Jurisdiction of Court to grant relief claimed.**

Heard: 15th January 2013

CORAM: JUSTICE DAVID BATTS

[1] The first hearing date for the Fixed Dated Claim Form came on for hearing on the 15th January 2013. On that occasion and having heard submissions from the claimant's counsel I dismissed the claim on the basis that this Court had no jurisdiction to make the orders sought on the claim. I promised to put my reasons in writing and now do so.

[2] The claim as framed is as follows:-

'The claimant, a company duly incorporated under the Companies Act with its registered office at 24 Trafalgar Road, Kingston 10 in the parish of Saint Andrew, claims against the defendants of 985 Penny Way, Portsmouth, Waterford P.O. in the parish of Saint Catherine for access to the property situated at 985 Penny Way, Waterford P.O. in the parish of Saint Catherine registered at Volume 1279 Folio 970 of the Register Book of Titles as a result of the order of the Honourable Ms. Justice McDonald on the 2nd December, 2011 that the property be sold and a valuation report be prepared by one of the prescribed real estate agents.

[3] It is apparent that the claim is for "access" to the defendant's property, "as a result of" an order made by this Court on the 20th December 2011.

[4] The affidavit in support of the Fixed Date Claim Form is sworn to by XIAO HUA and is dated the 25th September 2012. In that affidavit he refers to and attaches the order of Ms. Justice McDonald dated 20th December 2011. The affidavit further alleges that his attorneys wrote to the defendant's attorneys in order to make arrangements for real estate agents to attend the premises and undertake an inspection for the purpose of preparing a valuation report. He also expressed the view as advised by his attorneys that it is a precondition of the sale that a valuation be prepared.

[5] He says in paragraphs 6 and 7 of the affidavit that when the real estate agents attended the premises they were denied access. In consequence the claimant has been unable to list the property for sale by private treaty as a valuation has not been done.

[6] When the matter commenced I enquired of counsel what was the cause of action in this claim and whether it was appropriate to proceed by Fixed Date Claim Form. Counsel responded that the defendant was in breach of the order of the Court by not allowing the valuers entry to the premises and that as facts were unlikely to be in issue Order 8.1(4) (d) applied.

[7] I have considered the matter carefully and it is apparent that the Order of Ms. Justice McDonald made no reference to the claimant being allowed entry to the defendant's premises. There is therefore no breach of the Order of the Court of which complaint can be made. In any event a valuation can be done without entry to premises and the real estate agent can, in their report on the property, state clearly that he had not been allowed entry.

[8] Further the remedies for breach of an order of the Court are set out in Part 45 and following of the Civil Procedure Rules (CPR) 2002 as amended. These remedies do not include commencement of an action by Fixed Date Claim.

[9] Additionally and as I indicated to counsel it may be that if inspection of the premises is necessary that an application might be made, pursuant to liberty to apply, to have the Court vary the order of Ms. Justice McDonald . The application being placed before the same judge if she is available.

[10] In the result therefore I dismissed the claim and these are my reasons for having done so.

[11] There will be no order as to costs.