

NMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1997/P107

**BETWEEN THE PROPRIETORS, STRATA PLAN      PLAINTIFF**  
**NO. 461**

**A N D      URBAN DEVELOPMENT CORPORATION DEFENDANT**

Mrs. S. Minott-Phillips and Ms Gordon for Plaintiff.

And Mr. C. D. Morrison Q.C. and Ms. Vannessa P. Allard for  
Defendant.

**Heard: 11, 12, 13, 14 , 15 June, 2001 and 4<sup>th</sup> July, 2002**

**G.G. James J**

In this case the plaintiff alleges that the defendant negligently,  
or negligently caused, the plaintiff's premises to be valued for  
insurance purposes annually at figures which were more than twice

over the actual replacement value of the premises known as "The Point" in Negril (hereinafter referred to as the premises).

The premises is a 260-lot apartment complex, which was developed by the Urban Development Corporation (hereinafter referred to as the UDC). It is owned by the proprietors of the Strata Plan 461 individually and administered by them collectively.

On July 2, 1991 the plaintiff was registered as a corporation under the Registration (Strata Titles) Act. The plaintiff was required by statute to insure the buildings on the premises to their replacement value and to keep them so insured.

For the period October, 1991 to April, 1994, the insurance was put in place by the defendant in the plaintiff's name based on valuations done or obtained by the defendant. The premiums were all paid by the plaintiff. At least one of the valuations was supplied to the plaintiff by the defendant for a fee. The valuations, which were given by the UDC, were given for the purpose of effecting insurance for replacement value mandated by statute.

It is the plaintiff's contention that all valuations for the placement of insurance over the period October, 1991 to April, 1995

were done by the UDC and all of them were gross over estimates. The plaintiff further contends that between October, 1991 and June, 1993 the UDC acted for the plaintiff, in the plaintiff's name. Between June 26, 1993 and November 26, 1994, five of the nine members of the plaintiff's Executive Committee were employees of the UDC, thereby giving effective control of the Executive Committee to the UDC. In those circumstances there was a special relationship between the UDC and the plaintiff.

Because of this special relationship, the UDC should have been especially careful to ensure that any action taken by it on behalf of the plaintiff was in the very best interest of the said plaintiff.

Upon concluding that there were over valuations, the plaintiff attempted to get UDC to review its valuation of the premises but it refused to do so. Accordingly, the plaintiff obtained an assessment of the replacement costs for the premises from Construction Costs Consultants, Berkeley and Spence, who were the actual Quantity Surveyors used by the UDC on the premises.

The plaintiff's case is that if the UDC had taken such care in giving its valuations of the premises as was reasonable in the

circumstances, the valuations stated by it would have been much lower and the plaintiff would not have lost its money expended on premiums based upon the 'overblown' replacement values.

In order to establish its case it is necessary that the plaintiff prove that in arriving at its valuation the defendant and/or its employee acted negligently either by taking into account matters that were irrelevant or by omitting to consider matters which were relevant.

The obligation of the Strata Corporation is to insure for full replacement cost. Section 5 (1) of the Registration (Strata Titles) Act provides as follows:

- “(a) to insure and keep insured the building to the replacement value thereof against fire, earthquake, hurricane and such other risks as may be prescribed, unless the proprietors by unanimous resolution otherwise determine;”
- (b) subject to the provisions of section 14 and to such conditions as may be prescribed, to apply insurance moneys received by it in respect of damage to the building in rebuilding and reinstating the building so far as it may be lawful to do so;”

### The Plaintiff's Evidence of Value

Mr. Leonard Berkeley from the firm of Berkeley and Spence was the Quantity Surveyor on the project. He failed to make any allowance for interim financing during the reconstruction period. According to him, in his practice he never takes this into account. Mr. Berkeley also failed to make any allowance for the possibility of hyperinflation, a standard feature in a post disaster period. In his evidence, Mr. Berkeley agreed with the general proposition that, in assessing replacement costs for a complex such as the premises in question, it would need to take into account all sums of money, which would be needed to effect a replacement.

### The Defendant's Evidence of Value

The defendant relied on Mr. Phillip Myers who was at the relevant time an employee of the UDC and the person who did the actual valuations, Mr. Euwart Gayle, a Quantity Surveyor and Mr. Ivan Anderson, at the relevant time a Deputy General Manager of the UDC.

Mr. Myers' evidence was that in preparing his first valuation of \$300,000,000.00 he took as his basis the Quantity Surveyor's penultimate certificate, adjusted the stream of payments to a current sum based on the inflation data, made additions for site clearance, demolition and removal, professional fees, supervision, interim financing and inflation in the post disaster period. In the following year, the same exercise yielded a figure of \$400,000,000.00 and finally in 1993 a figure of \$660,000,000.00. The only difference with respect to the 1993 valuation was that, given that the complex had by this time been completed, Mr. Myers was able to break out the valuation to attribute a figure per block so as to facilitate 'partial claims'. He did not make any allowance for salvage, because in his view such a consideration would have been inapplicable in the event of a total loss. The opening amount shown on Mr. Myers' spread sheet (Exhibit 4, page 14) and having been expended by December, 1988 (\$5.3 million) was incorrect. The actual amount was in fact \$2.4 million.

Mr. Euwart Gayle gave evidence and produced a report (Exhibit 7) prepared by him in May, 2000 on the replacement cost of

the property as at April, 1995. This report provides a basis for comparison with Mr. Berkeley's report dated April, 1995 and with Mr. Myers' 1993 report . Mr. Gayle's valuation of replacement cost was \$565,181,000.00.

Mr. Ivan Anderson, a former General Manager of the UDC, was the final witness for the defendant. He demonstrated from the spread sheet (**Exhibit 2, page 51**) that an independent rough estimate done by him, established a value of about \$628 million. Mr. Anderson, a civil engineer by training supports both Mr. Myers and Mr. Gayle in saying that in a total loss situation, as a result for instance, of an earthquake, one would not expect salvage of any significance.

Having carefully considered all the evidence in this case, it appears that the main basis for complaint is that Mr. Myers arrived at a vastly different conclusion from that of Mr. Berkeley. I can find no evidence of negligence on the part of the defendants in arriving at its conclusion.

I give judgment for the defendants with costs to be taxed if not agreed.

I regret the delay in giving this judgment. I am grateful to the attorneys for their helpfulness and patience.