

**TUESDAY – 7<sup>TH</sup> OCTOBER, 2003**

**SUPREME COURT ACTIONS NOS. 217 AND 312 OF 2001**

**IVEY JOHNS et al**

**v.**

**JOHN SPRANG**

**APPEARANCES**

Magali Marin Young for Plaintiff with F. Lumor S.C.  
Derek Courtenay S.C. for Defendant in Action No. 186 of 2001.

**On stay by summons dated 6<sup>th</sup> October 2003.**

**LUMOR:**

Action No. 186 of 2001 deals with same subject matter as consolidated action in 217 and 317 of 2001 arising out of one of divided sub-properties generally referred to as Seven Hill Estate.

Grounds for consolidation are same for three actions – it would be therefore expedient to consolidate 186 together with 217 and 312; for by Summons dated 24<sup>th</sup> July 2001 defendants in consolidated action were seeking to be parties to Action 186 – but still pending.

Therefore would request that all three actions be stayed, to await outcome of writ sued under Chapter 180 – Ascertainment of Boundaries Act.

Refers to J. Sprang's Affidavit of 6<sup>th</sup> October, 2003.

**MARIN-YOUNG:**

Objecting to application for several reasons.

1. Action 186 of 2001 is a claim in trespass against Seven Hill Estate, a company which bought estates in Action No. 217 and 312.

Its position is that 217 and 312 should be heard before 186. Defendants in 186 may have a good defence as purchasers.

A hearing of 217 and 312 may well dispose of Action 186.

2. 217 and 312 are issued in June 2001, the issues are not novel. Two years have elapsed and both parties have been aware of boundary overlap since 1994. Parties have had ample time to have property surveyed before hearing since October 2002.

The issues are not new as parties have been aware.

Submit that 3<sup>rd</sup> Action – 490 of 2003, pursuant to Chapter 180, is an abuse of process to raise issue of boundaries as these are raised in 212 and 317.

So plaintiff in 490 should have sought amendment to seek further reliefs in 217 and 312.

Also objecting to writ in 490 as parties are not properly described and all four defendants are foreigners and leave of Court to issue writ is necessary and one of them is deceased.

Also this matter has come on for hearing four times previously. Delay by defendants now seeking stay, further delay.

There was ample opportunity for defendants to have sought orders now.

Also, plaintiffs are prejudice by delay sought – threats for non-payment of taxes and non-receipt of purchase monies by injunction.

#### **COURTENAY:**

In relation to Action 186 would support plaintiffs' arguments as advanced by Marin-Young – Seven Hills would be concerned by delay.

Also the Court would have power to make any of orders sought in Action 490.

The course involved in Action No. 490 would gravely delay resolution of actions.

#### **COURT:**

Leave is given to issue writ pursuant to Chapter 180 - ascertainment of Boundaries Act, as it is believed that the real issues in contention between the parties in the several actions filed could be justly resolved by the ascertainment of boundaries in the respective areas of land claimed by the parties.

Accordingly the actions 186, 217 and 317 are ordered stayed to await the outcome of proceedings under Chapter 180.

Because of the delay the defendants had caused to ensue in this matter, costs of this application is awarded to the plaintiffs in the sum of \$1,000.00.

Leave is given to abridge time as provided for in Chapter 180. Plaintiff is given leave to serve writ out of jurisdiction on all four foreign defendants.

The Writ to be published by Registrar in two consecutive issues of The Gazette, and displayed for two weeks at Court House in Toledo District where land is situated.

Application for direction in the matter to be made on or before 15<sup>th</sup> December 2003.

Costs are also awarded to defendant in Action No. 186 in the amount of \$500.00.

A. O. CONTEH  
Chief Justice