

IN THE SUPREME COURT

Common Law and Equity Division

IN THE MATTER OF Section 53(3) of the Town Planning and Subdivision Act of 2010

AND

IN THE MATTER OF the Saving Clause of Section 77(3) of the Town Planning and Subdivisions Act of 2010

AND

IN THE MATTER OF the inherent Jurisdiction of the Court

BETWEEN

ROGER DEAN

Plaintiff/ Applicant

AND

THE MINITSTER OF WORKS AND UTILITIES
(The Town Planning Department)

1st Defendant

AND

THE ATTORNEY GENERAL OF THE BAHAMAS

2nd Defendant

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Mr. V. Alfred Gray for the Plaintiff/ Applicant

Mr. Kirkland Mackey along with Sophia Lockhart for the Defendants

Hearing Date: 16th and 20th May, 2022

JUDGMENT

Darville Gomez, J.

Introduction

1. The Plaintiff is the owner of a subdivision known as Melvaric Court in the Eastern District of the Island of New Providence. He applied for approval to use a road called Innisfree Road which he deemed to be a public road because without this approval he will be effectively prevented from accessing his lots. He alleged that the Town Planning Committee has continuously refused to

grant access to the said road which he believes to be a public road in accordance with section 53(3) of the Town Planning and Subdivision Act of 2010.

2. Therefore, the Plaintiff commenced this action by way of an Originating Summons and supported by two Affidavits seeking the following relief pursuant to Section 53(3) and 77(3) of the Town Planning and Subdivision Act, 2010:
 - (i) A Declaration that Section 53(3) of the Town Planning and Subdivisions Act of 2010 applies to “Innisfree Road” in the Innisfree Subdivision, New Providence since the said Subdivision is not a gated subdivision.
 - (ii) An Order that the said road, (Innisfree Road) is deemed to be a Public Road for the use by the general public.
 - (iii) An Order that the Town Planning Committee is obliged to consider the Application of the Plaintiff for the use of “ Innisfree Road” in the Innisfree Subdivision, since the subdivision is not a gated subdivision.
 - (iv) Such other relief that the Honourable Court deems just.
3. The Defendants responded by way of Affidavit sworn by Charles Zonicle, Director of Physical Planning at the Department of Physical Planning.

Issue

4. Paragraph 2 sets out the miscellany of relief being sought from this Court, however, the gravamen is whether the Plaintiff is able to access his lots in Melvaric Subdivision.

The Law

5. *Section 53 of the Town Planning and Subdivisions Act, 2010* (‘the Act’) provides that:

“(1) Without limiting the scope of this Part, no person shall lay out any subdivision unless-

- (a) provision is made for the reservation of areas for the construction of access roads to each proposed lot;**
- (b) provision is made for each tract of land in the subdivision to front onto an existing road that is permitted direct access; or**
- (c) provision is made for the owner of a lot in a subdivision to have access to a public road.**

(2) A maximum of twenty-five lots may front on any system of road network or cul-de-sac with only a single access/egress road.

(3) An owner of a subdivision shall complete construction of the subdivision roads and convey the road allowances of the completed roads to be Government within a period of one year from the date of Subdivision Approval unless the subdivision is to be developed as a private gated community.”

The Evidence

1. The Plaintiff's evidence is that he is the owner of the Subdivision known as 'Melvaric Court' in the Eastern District of the Island of New Providence and that he had applied for approval to use Innisfree Road which he deemed to be a public road. He claimed that the First Defendant, the Town Planning Committee has continuously refused to grant access to the said road which he verily believes to be a public road in accordance with section 53(3) of the Town Planning and Subdivision Act of 2010. Further, he has said that if he is unable to use the Innisfree Road to access his property, then he will be effectively prevented from assessing his lots which borders Innisfree Road in the Innisfree Subdivision.
2. The Plaintiff exhibited a Proposed Plan dated September, 2014 in his Affidavit, however, in his Supplemental Affidavit he noted that this was not the approved plan and therefore exhibited the approved Plan which was similar to the Plan exhibited by the Defendant in the affidavit of Charles Zonicle.
3. The Plaintiff goes on in his Supplemental Affidavit to state as follows:

“ 3. That further I wish to say emphatically that the land over which the Town Planning Director speaks and over which he suggests that the application crosses is a private lot owned by one Valentino Munroe since 2008 (See copy of the Conveyance now attached and marked RD2 and is not accessible for passing over as ordered by Court Order. (See copy of the order of the Court marked Exhibit RD3).

4. That the chronology of the letters and documents to which I refer herein are all attached hereto in order of date. Two of such letters will show that the Department of Town Planning is relying on the Court to resolve this issue. (see copies attached of the letters and documents hereto Exhibited and marked RD4 (a) to (d).”

4. The evidence of the Defendant as set out in the Affidavit of Charles Zonicle, the Director of Physical Planning of the Ministry of Works and Utilities is that Innisfree Road forms part of the Innisfree Estates Subdivision which was developed by Mr. Pandelis N Pslinakis sometime around 1996 and later approved in 1998 under the then, Private Roads and Subdivisions Act, which was repealed by the current Town Planning and Subdivision Act, 2010. He noted that the Plaintiff owned another track of land which adjoins the Innisfree Estate Subdivision and that he was given final subdivision approval by a letter dated March 24, 2011 which was exhibited along with the final approved plan.
5. I set out the relevant provisions of the Affidavit of Charles Zonicle:

5iii That since about 2009 or earlier the Plaintiff had sought to have access over privately owned land forming part of the now Innisfree Estate Subdivision, in particular, Innisfree Road as an access point to his then proposed subdivision, Melvaric Court. This was repeatedly rejected by the developer of Innisfree Estate Subdivision. The Plaintiff and his then attorney (now deceased) were duly advised of said rejection by letter of July 13 and July 20, 2009 respectively. A series of correspondence advising against access over privately own land is exhibited at EXHIBIT CZ2-A thru EXHIBIT CZ2-D.

5iv A final subdivision plan for Melvaric Court taking into account and addressing any issue of access points was eventually approved. The approved subdivision plan for Melvaric Court does not require access over Innisfree Road. The Plaintiff is totally untruthful in his assertions as contained in his Affidavit that he is “unable” to and “prevented from accessing his property” unless by way of Innisfree Road. The final approved subdivision plan for Melvaric Court provides adequate entry and access points.

5xviii The final approved plan provided for a clear point of access to the subdivision via Pears Road, High Vista (which had been acquired by the Government) and the proposed “Deans Way” a 30 foot road reservation within the subdivision which provided a clear access and entry point to Melvaric court. Access via the privately owned subdivision or Innisfree Road is not required based on the approved subdivision plan. The Plaintiff is obliged to conform to the final approved subdivision plan.

6. I refer to three letters referred to in the Affidavit of Charles Zonicle as follows; (i) 13th July, 2009; (ii) 20th July, 2009 and (iii) 7th August, 2009. The first letter was addressed to the Plaintiff from the Department of Physical Planning advising him that permission was required from the property owners of Innisfree Subdivision to gain access over Innisfree Road. This was followed by the letter of 20th July, 2009 to the Plaintiff from the Ministry of the Environment denying approval for the subdivision due to the refusal of the developers of Innisfree Subdivision to allow the Plaintiff passage over the private road to access his property. The final letter dated 7th August, 2009 referred to the deficiencies in the Plaintiff’s proposed plan particularly the failure to include the entrance to the subdivision at Pear Drive off High Vista. The Plaintiff was then asked to revise the plan to include the access from Pear Drive.
7. The Plaintiff obviously complied with the request to revise the plan because the approved plan dated March 24, 2011 clearly provides for the entrance to the subdivision through Deans Way off Pear Drive. Further, and in accordance with section 53 (1)(c) of the Act, no subdivision approval would have been granted to the Plaintiff without access to a public road.
8. The Plaintiff’s contention that he verily believed Innisfree Road to be a public road cannot be honestly held given the contents of the letters in paragraph 6. Further, the fact that the Plaintiff obtained subdivision approval is inconsistent with the Plaintiff’s evidence that he unable to access to his property.
9. The Plaintiff appeared to proffer a reason or an excuse as to his inability to access his property where he averred that the land over which the Town Planning Director speaks and over which he suggests that the application crosses is a private lot owned by one Valentino Munroe since 2008. However, without more details, it is unclear and irrelevant.
10. What is pellucid and undisputed is the fact that the Plaintiff has subdivision approval for Melvaric Subdivision with access through Deans Way off Pear Drive.
11. Accordingly, I respond to the assorted relief being sought as follows: _

A Declaration that Section 53(3) of the Town Planning and Subdivisions Act of 2010 applies to “Innisfree Road” in the Innisfree Subdivision, New Providence since the said Subdivision is not a gated subdivision.

12. This relief requires consideration of matters that are not properly before the Court. Charles Zonicle in his affidavit provided some information relative to this subdivision including the fact that Innisfree Subdivision obtained approval prior to the Act.
13. The Court is reminded of Order 15, rule 6 of the Rules of the Supreme Court which provides for the addition of parties in certain circumstances. I refer in particular to Order 15, rule 6(2)(b)(i) and (ii) respectively which provide: for the addition of parties where the person ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute may be effectually and completely determined and adjudicated upon; and, the addition of any person where there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.
14. I believe that the consideration of this issue would require the addition of the owners of the Innisfree Subdivision. Therefore, were I minded to consider the grant of this relief, I would have ordered their addition as parties under Order 15, rule 6(2)(b)(i) or (ii) because to do otherwise, would have been inappropriate and unjust.
15. However, the Plaintiff does have access to the lots in his subdivision having been granted subdivision approval under Section 53 of the Act; therefore, I deny this relief.

An Order that the Town Planning Committee is obliged to consider the Application of the Plaintiff for the use of “Innisfree Road” in the Innisfree Subdivision, since the subdivision is not a gated subdivision.

16. This relief pre-supposes that I have found that the Innisfree Subdivision is not a gated subdivision or that this fact has already been established. That is not the position.
17. It is unclear why the Court would cause, compel or force the Town Planning Committee to consider the application of the Plaintiff for the use of Innisfree Road when the Plaintiff has an approved subdivision plan which provides for access to his subdivision. Further, and in any event, the ability to compel or force the consideration by the Committee of this request would be required to be done in another type of action.
18. For the above reasons, I reject this relief.

An Order that the said road, (Innisfree Road) is deemed to be a Public Road for the use by the general public.

19. I reiterate paragraphs 12 through 14 and repeat that the Plaintiff has access to his lots and therefore, I decline the relief sought.

Conclusion

20. This entire application is misconceived because the Plaintiff has subdivision approval for Melvaric Court and therefore, the reliefs claimed were unnecessary.

21. Accordingly, the Plaintiff's application is hereby dismissed with costs to the Defendant to be agreed and in the absence of agreement, the costs will be fixed after submissions from the parties.

Dated this 5th day of December, A. D., 2022

A handwritten signature in blue ink, appearing to read 'CD Gomez', written in a cursive style.

Camille Darville Gomez
Justice