Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. B212 OF 1994

BETWEEN	BLUE HAVEN ENTERPRISES LIMITED	PLAINTIFF
A N D	DULCIE ERMINE TULLY (Executrix of Estate Cyril Lorenzo Shirley AND Mimili Hermintrude Shirley, Deceased)	FIRST DEFENDANT
A N D	ERIC CLIVE ROBINSON	SECOND DEFENDANT

Raphael Codlin and Mrs. Arlene Harrison-Henry for Plaintiff.

Mrs. M. E. Forte Q.C. & Maurice Frankson for First Defendant.

John Vassell & Miss Small instructed by Dunn Cox & Orrett for Secondand Defendant.

Heard: January 8, 10, 11, 12, April 23, 24, 25, October 28, 29, 30, 31, 1996; February 24, 25, 26, 27, & April 18, 1997.

LANGRIN, J.

The plaintiff as the successor in title of Dr. White claims against the first defendant specific performance of an agreement made between himself and the first defendant on the 5th January 1988 in respect of ninety-five acres of land. The plaintiff also claims damages in addition to or in lieu of specific performance against the first defendant.

The plaintiff also made the following claim against the second defendant.

A declaration that the said lands are held in trust by the second defendant on behalf of the plaintiff. Alternatively, that all crops growing on the lands when the second defendant took possession thereof that were planted by the plaintiff, constitute an equitable interest in the said lands on behalf of the plaintiff. An order that the second defendant account to the plaintiff for all such proceeds. An order under Section 459 of the Judicature (Civil Procedure Code) law that the second defendant preserve and give

account of all crops which were growing on the lands at the time when the second defendant took possession thereof pursuant to a Court order.

A short summary of the facts relevant to the dispute are stated as follows:

The first defendant was the executrix of the estate of the late Lorenzo and Mimili Hermintrude Shirley. She was the personal representative of the Shirleys. In 1985 she entered into a contract to sell the lands to the second defendant. After signing an agreement with the second defendant, both defendants had a dispute over the number of acres of land being sold. The attorneys acting for the first defendant purported to cancel the sale with the second defendant and the matter ended up in Court.

In the meantime Dr. White heard that the first defendant had coffee lands for sale. He went to the first defendant and entered into an agreement to purchase the said lands. When he entered into the agreement he was not told that there had been an earlier purchaser of the land.

Dr. White proceeded to plant coffee on 60 acres of the land and by November 1993 had reaped two crops.

A spate of litigation relevant to this dispute occurred in this matter and it is instructive to refer to these events in order to show the intensity of the litigation:

SUMMARY OF THE CHRONOLOGICAL SEQUENCE OF LITIGATION IN:

SUIT NO.E.160 OF 1987

ERIC CLIVE ROBINSON V. DULCIE ERMINE TULLY (Executrix of Estates of CYRIL LORENZO SHIRLEY, deceased and MIMILI ERMINTRUDE SHIRLEY, deceased)

SUIT NO. C.L. R.149 OF 1992

ERIC CLIVE ROBINSON V. DULCIE ERMINE TULLY (Executrix of the Estates CYRIL LORENZO SHIRLEY, deceased) AND MIMILI ERMINTRUDE SHIRLEY deceased)

SUIT NO. C.L. B.212 OF 1995

BLUE HAVEN ENTERPRISES LIMITED V. DULCIE ERMINE TULLY (Executrix of the Estates of CYRIL LORENZO SHIRLEY, deceased and MIMILI ERMINTRUDE SHIRLEY, deceased) and ERIC CLIVE ROBINSON.

DATE	STEPS TAKEN
November 14, 1985	(Agreement for Sale between Eric Clive Robinson and Dulcie Tully in relation to property at Shirley Castle signed)
	(Dispute arises in relation to abatement of purchase price due to material discrepancy in acreage)
	(Robinson's Attorneys, DCO & A, tender abated purchase price)
May 22, 1987	Vendor's Attorney returned abated purchase price and Agreement for Sale purportedly cancelled
May 22, 1987	Clive Robinson files Originating Summons supported by Affidavit of Clive Robinson Suit No.E. 160 of 1987
August 3, 1988	Tully files Summons to Dismiss Action for want of Prosecution and Affidavit of Reginald Fraser in Support disclosing the existence of another contract to sell the same land
January 9, 1989	Gordon J, dismissed Summons to dismiss Originating Summons
January 10/11, 1989	Robinson obtains Final Order on Originating Summons from Gordon J. containing Declaration that he is entitled to an abatement of the purchase price and also an injunction prohibiting any dealing with the land other than pursuant to the contract with Robinson
April 6, 1992	Tully files Notice and Grounds of Appeal against Order on Originating Summons
July 13, 1992	Appeal filed by Tully dismissed by Court of Appeal.
July 13, 1992	Tully files Petition for Special leave to Privy Council against Order for declaration but not injunction
September 10, 1992	Robinson files 2nd Suit - C.L. R149 of 1992 Application for Summary Judgment made in this suit.
December 21, 1992	Robinson files Relisted Summons for Summary Judgment and Affidavit of Clive Robinson sworn to on the 5th day of October 1992 in support.
December 29, 1993	Tully files Summons for leave to file Defence out of Time, and Affidavit of Dulcie Tully in support revealing that contract made with Dr. White and that he was put into possession
January 13, 1993	Final Judgment of Edward J, on application for Summary Judgment granting Specific Performance and vacant possession to Clive Robinson made. Order stayed pending Appeal in Suit No. E167 of 1987 to Privy Council

February 2, 1993	Tully files Notice and Grounds of Appeal against the Judgment of Edwards J. in Suit No. C.L. R149/92
March 10, 1993	Tully's Petition to Privy Council in Suit No. C.L. E160 dismissed
September 30, 1993	Order for Stay of Execution of the Order for Summary Judgment in Suit C.L. R149/92 discharged.
January 11, 1994	Writ of Possession issued
January 18, 1994	Clive Robinson Put in possession
January 21, 1994	Enid Lois White files Notice of Motion to intervene and be added as Defendant and affidavit of Enid Lois White filed detailing the claim of Dr. White who by then had been possession.
January 27, 1994	Enid White's Motion to intervene dismissed by Order of Ellis J.
February 1, 1994	Enid White files Notice and Grounds of Appeal against the Order of Ellis J.
May 10, 1994	Suit No. C.L. B212 of 1994 filed by Blue Haven Enterprises, nominee of Dr. White, against Dulcie Tully and Clive Robinson
May 26, 1994	Blue Haven Enterprises obtains Ex-parte Order on application to restrain Clive Robinson from disposing of the land and to preserve and maintain the crops for a period of 10 days from Harris J.(Ag.)
June 3, 1994	Appearance filed by DCO & A for 2nd Defendant, Clive Robinson in Suit No. C.L. B212 of 1994
June 13, 1994	Tully's Appeal to Court of Appeal against Order for Summary Judgment in Suit No. E167 of 1987 dismissed
June 24, 1994	Robinson files Summons to vary Order of Edwards J. and Affidavit of Winston John Vassell sworn to on June 24, 1994, as it is discovered that a registered title had already been obtained by Tully and neither Robinson, nor the Court had been advised of same
June 30, 1994	Order made by Edward J. in Suit No. C.L. R149/92 on Summons to vary his previous Order directing the Registrar of Titles to cancel previous Certificate of Titles and issue new one in the name of Robinson
July 5, 1994	Order made for payment into Court of purchase price in C.L. R149/1992 and abated purchase price paid in
August 5, 1994	Transfer sent to Registrar of Titles. Registrar of Titles returns Transfer due to Caveat filed by Dr. White Against the Title
	Registrar refuses to issue title in the name of Clive Robinson

November 2, 1994	Defence of 2nd Defendant, Clive Robinson in 3rd Suit No. C.L. B212/94 filed
March 14, 1995	Summons on behalf of Blue Haven Enterprises to prevent the Registrar of Titles from cancelling previous title and issuing a new one supported by Affidavit of Enid White dated March 14, 1995 and affidavit of Clive Robinson in opposition filed
April 27 1995	No order made on that Summons other than for speedy trial
April 27, 1995	Robinson files Summons and affidavit of Clive Robinson and W. J. Vassell in support of Application to remove Caveat
May 30, 1995	Order made by Bingham J. removing caveat and instructing Registrar of Titles to cancel previous Title and issue new one in the name of Clive Robinson.
June 9, 1995	Application filed on behalf of Blue Haven Enterprises in the Court of Appeal against the Order of Bingham J. removing caveat Matter heard in Chambers and application dismissed
July 21, 1995	Registered Title issued to Clive Robinson.

Pleadings

In the statement of claim the plaintiff alleges that pursuant to the said agreement on the 29th September 1988, Mr. Reginald Fraser, the attorney with the Carriage of Sale addressed a letter to Dr. White placing him in possession of the said property. The plaintiff continued the cultivation of his coffee and in or about 1992 whilst the said Dr. White was not on the premises, the second defendant left a message to say that he did not like how the said Dr. White was cultivating the property. On the 21st September, 1992, Reginald Fraser wrote a letter to Dr. White informing him that another person had entered into an agreement to purchase the said property.
By paragraph 15 it is asserted among other things that the plaintiff having been let into possession through the said Dr. White it became a buyer in possession of the property and having embarked upon the cultivation of coffee and changed the whole nature of the land is entitled to have the fee simple absolute transferred to it on the

ground that its interest supersedes all others. The plaintiff will also say that the second defendant holds the land on Resulting Trust for the plaintiff.

By the defence of the first defendant it is alleged at paragraph 6 that she had rescinded the contract between herself and the second defendant who had not pursued his legal remedy and having regard to his delay and acting upon independent legal advice the second defendant had abandoned any rights he may have had.

The second defendant at paragraph 6 alleges that shortly after the plaintiff commenced cultivation of coffee on the land, he was made aware by the second defendant of the latter's right in the land pursuant to agreement for sale with the first defendant and pursuant to an order of the Supreme Court. Paragraph 11A states that on the 21st July 1995 the second defendant was registered under the Registration of Titles Act as proprietor of the said land at Volume 1278 Folio 155 of the Register Book of Titles.

I turn now to a consideration of the evidence in relation to the relevant issues.

Mr. Robinson testified that he is the registered proprietor of lands registered at Volume 1278 Folio 155 since 21st July, 1995. He purchased lands from Mrs. Tully in 1985. There was an agreement for sale. In 1985 when he purchased the land it was in ruinate and he intended to start planting 75 acres of coffee. There was litigation between himself and Mrs. Tully in respect of the agreement for sale and it was 2 weeks after the order of Gordon J. in January 1989 that he visited the property where he observed that someone had just begun planting coffee. He wanted to stop anyone from planting coffee on the land. He saw one Mr. Dillon on the property whom he asked who was planting the coffee. Mr. Dillon said he did not know. Mr. Robinson testified that he told him that what they were doing is illegal because there was a Court order making him the owner of the land. Mr. Dillon refused to give his employer's name and

Mr. Robinson asked him to give his employers a note. Robinson wrote a note including his telephone number and address and requested him to give the note to his employer. The conversation with Mr. Dillon lasted about half an hour. About one month later he returned to the property and spoke to Mr. Dillon who said he had delivered the message to Dr. White. Robinson said he never heard from Dr. White and he would have expected Mrs. Tully to inform Dr. White of the litigation in the case.

In February 1993 he delivered a letter written by his Attorney to Dr. White. Robinson admitted that he found 33 acres of coffee on the land when he took possession.

Between January 18, 1994 and July 31, 1994 he reaped 225 boxes of coffee.

When he received the Order of Summary judgment from the Court in December 1993 he again went to Mr. Dillon Dr. Whites foreman on the property with the order and spoke to him but he said he worked for Dr. White and not for him. In January 95 the Bailiff was given the Order to take possession of property.

Mrs. Enid White, a party to the sale agreement testified that her husband and herself started planting coffee in 1989. There were 44½ acres of coffee planted by them. In 1990 31½ acres were planted and finally in 1991 ten acres were planted.

Mrs. Tully had not informed Dr. White that the property was sold to anyone else.

John Ross, an attorney at law, testified that he represented Dr. White in respect of the purchase of the property. After the survey of the land was completed his client was granted a letter of possession of the property. The letter was dated 21st September, 1988. Subsequently he received communication from Mr. Reginald Fraser, the Vendor's Attorney at Law, stating that a Court order prevented him from concluding the contract with his client. Mr. Ross lodged a caveat against the title to protect his client's contract. Mr. Ross stated that if the existence of the previous proceedings had been

disclosed to him he would have advised his client not to take possession of the property. Mr. Fraser, Attorney at Law represented the Vendor in the sale of the land. When the agreement was signed there was no registered title for the land and the only documents in respect of the land were receipts. There was a transfer which was not registered in the name of the second purchaser because by then there was a Court of Appeal judgment allowing the appeal of the first purchaser.

I cannot find as a fact, on the evidence before me, that Dr. White, or Mrs. White, would not have embarked on planting the coffee if they had been told that there was litigation involving a previous sale of the said land. Mrs. White, who testified on behalf of the plaintiff, has not troubled herself to say whether or not she would have done so. This of course is not surprising, since no real challenge was made to Robinson's evidence concerning the message he sent to Dr. White in January 1989 by way of Mr. Dillon, Dr. White's farm manager, informing Dr. White of Robinson's ownership of the land when the coffee planting had commenced.

My findings of fact are therefore:

1. That when Robinson purchased the land there was no prior purchaser.
2. That Robinson had no actual or constructive knowledge of the subseqent sale of the lands, nor had he wilfully shut his eyes to the obvious or wilfully and recklessly failed to make such enquiries as an honest and reasonable man would make. Indeed Robinson obtained an injunction on January 10, 1989 restraining Tully from dealing with the land other than pursuant to the contract with Robinson.
3. That in January, 1989 when the planting of coffee had commenced Robinson informed Dillon, Dr. White's farm manager of his ownership of the land and sent a note to Dr. White informing him of this situation. This information was related to Dr. White.

Mr. Codlin's submissions for the plaintiff against the second defendant were essentially fourfold.

Firstly, that the instrument signed by the first and second defendants in 1985 is a deed and should therefore have been recorded as required by Record of Deeds, Wills and Letters Patent Act. The faillure of the second defendant to record his deed operates as a perpetual bar against the second defendant and the rest of the world. By virtue of section 2 of the Act the land passed to the plaintiff on the 5th January 1988.

Secondly, the question of priority of interests must be determined in favour of the plaintiff since the first purchaser failed to record his interest and allowed the vendor to come out into the world to deceive others to think that the land was free.

Thirdly, the application of the Rule in Ramsden v. Dyson (1866) LR. H.L. 129 favours the plaintiff. Having been put in possession of the land after paying his deposit he was entitled to be under an expectation created and encouraged by the landlord that he shall have a certain interest in the land.

Fourthly, the property is held on resulting trust by the second defendant for the plaintiff, because the property came into the hands of the second defendant in such circumstances that equity compels him to hold it on behalf of the plaintiff.

The points which arise for decision therefore are these:

(1) Is the second defendant's agreement for sale void for want of registration?

(2) Is the question of priority of interest to be determined in favour of the plaintiff?

(3) Does the rule in Ramsden v. Dyson apply?

(4) Should the property be held on Resulting Trust for the plaintiff?

The most formidable argument made against the plaintiff is that the second defendant is the registered owner of the property and

enjoys indefeasibility of title under the Registration of Titles Act. Mr. Vassell, Counsel for the second defendant submitted with much force and clarity that Sections 68, 70 and 191 of the Registration of Titles Act and the interpretation of those sections adopted by the Court of Appeal in Nunes & Appleton Hall Limited v. Williams etal (1985) 22 JLR 348 support that view. He further submits that no fraud has been alleged or proven and none in fact could be alleged since the second defendant's title resulted from the exercise of the power of the Court under Section 158 of the Registration of Titles Act and is supported by judgments of the Supreme Court, the Court of Appeal and to an extent the Privy Council.

I accept these submissions by Mr. Vassell on the indefeasibility of the registered title of the second defendant and its immunity from attack by adverse claimants and on this ground alone the plaintiff's claim for the land against the second defendant fails.

Registration of interests in Unregistered Land

I now turn to the first issue in the case which concerns the Records of Deeds, Wills and Letters Patent Act. Section 6 of the Act states as under:

> "6. All and every deed or deeds which shall be made or executed within this Island for any lands, tenements, or hereditaments whatsoever shall be duly proved or acknowledged, and recorded, within ninety days after the date or dates of such deed or deeds, otherwise to stand void and of no effect against all other purchasers or mortgagees bonafide for valuable consideration of the said lands, tenements or hereditaments, who shall duly prove and record their deeds within the time prescribed by this Act from the dates of their respective deeds."

Since the lands were unregistered the provisions of the Registration of Titles Act enabling the lodging of caveat were not available to the second defendant at any time between the time he acquired his interest in 1985 and when the plaintiff acquired its interest in 1988. The arguments advanced by the plaintiff to the effect that the Records of Deeds, Wills and Patent Act required that

the Agreement for Sale should be registered is misconceived. The Act requires the registration of a conveyance passing the legal estate in unregistered land. It does not deal with registering some lesser equitable interest or lodging a caution in relation to such interest. Section 2 of the Act provides that deeds recorded within three months after execution is valid to pass freehold without livery, seisin attornment or any other act or ceremony.

In my view the relevant instrument is not a deed and therefore the section has no application to the instant case.

Priority of competing unregistered equitable interests

The maxim, "where the equities are equal the first in time prevails", is used to describe the regulation of competing unregistered equitable interests in property. Where both interests in land are equitable, the primary rule is that priority depends upon the order in which the equitable interests were created. However, the basic rule of order of creation can be supplanted by an equitable interest later in time if the holder of the prior equitable interest by his act or omission has contributed to a belief in the holder of the subsequent equitable interest, when he acquired his interest, that no outstanding equitable interests were in existence.

In Lynch v. O'Keefe (1930) St. R.Q.D. 74 the Learned Judge observed that priority between equitable interests under the Torrens System was to be determined by the general principles of equity jurisprudence. The burden was accordingly on the person whose interest was later in time to show something tangible and distinct to displace an equitable title prior in time.

The question then seems to be: Had the second defendant when the plaintiff acquired his equitable interest, taken, or failed to take, all reasonable steps to prevent the plaintiff from dealing with the land without notice of the second defendant's equitable interest?

In the absence of a Land Charges Register to which I made reference in a previous judgment: Broadway Import & Export Limited v. Levy & Life of Jamaica Suit C.L. B81/93 delivered March 1, 1996 that an order to postpone a prior incumbrance it was necessary to show: (1) that there was some conduct amounting to a breach of duty to a subsequent purchaser and (2) that the purchaser was induced to act to his prejudice by the conduct.

In my judgment and in light of my findings of fact there is no act or default of the prior equitable owner such as to make it inequitable as between himself and the subsequent equitable owner that he should not retain his initial priority. Accordingly the second defendant's priority cannot be displaced by the plaintiff's subsequent equitable interest.

Proprietory Estoppel

The obiter dictum of Lord Kingsdown in Ramsden v. Dyson (1866) LR 1 H.L. 129 which is concerned with cases where a person expends money or acts to his detriment in relation to land in the mistaken belief that it belongs to him and the true owner being aware of the mistake deliberately refrains from correcting the mistake. This latter aspect of the rule is an exception to the rule that if a person spends money on the property of another he does not acquire an interest in it.

Acquiescence and encouragement are the factors forming the basis of the doctrine of proprietory estoppel.

In the case of Dillwyn v. Llewellyn (1862) 4 De GF & J 517 a father made an ineffective gift of land to his son. The son with the father's knowledge and approval then spent some £14000 erecting a bungalow on the land. On his father's death, the son was held entitled to a conveyance of the land.

In Wilmott v. Barber (1880) 15 CL D96 Fry J. Went further and listed a number of technical requirements usually referred to as the five probanda for what is now known as proprietory estoppel. They can be summarised as follows:

(i) "A must have spent money or in some other way acted to his detriment under a mistaken belief

(ii) A's mistaken belief must be that he already owned or was certain to acquire some sufficient interest in B's land to justify the expenditure.

(iii) B must have known of both the expenditure and the mistaken belief

(iv) B must have done nothing to disabuse A of his mistaken belief i.e. encouraged it or acquiesced in it."

In more recent times the protection has been extended to cases where the encouraged belief related to a future right when a species of constructive trust might arise. In Re Basham (1987) 1 ALL ER 405 the encouraged belief was that the plaintiff would inherit a house.

In Inwards v. Baker (1965) 1 ALL ER 446 a son wished to build himself a bungalow but found the price of land beyond his means. His father who owned land in the district said, "Why don't you build a bungalow on my land and make it a bit bigger? As a result the son built a bungalow on his father's land, in the belief that he would be allowed to remain there for his lifetime or as long as he wished. On these facts the Court held that the son was entitled to have his occupation protected by equity, for as long as he desired to remain in occupation.

The persons estopped in those cases and against whom the reliefs were granted were the owners of land who themselves encouraged the expenditure. None of the cases deal with a third party such as Robinson being estopped. The submission of Mr. Codlin about the equity running with the land into the hands of Robinson is misconceived.

In the decision of the Privy Council in A.G. of Hong Kong v. Humpherys Estate (Queens Gardens) Limited (1987) 2 ALL ER 387 Lord Templeman delivering the judgment of the Board considered the authorities on estoppel from Ramsden v. Dyson (supra) to Taylor Fashions Limited v. Liverpool Victoria Trustee Company Limited (1981) 1 ALL ER 897 and held that for A to claim an estoppel against B there had to be an acting by A to his detriment (ii) a creation or encouragement of a belief or expectation by B and (iii) a reliance on that by A.

In more modern times there is a tendency to unify the cases under the doctrine of unconscionability requiring the claimant to prove three essential elements of assurance, reliance and detriment to found a cause of action under the doctrine.

It is demonstrably clear that at least 2 of these elements were not shown by the plaintiff.

While there may be an enrichment received by the second defendant by subtraction from the plaintiff, there is an obvious failure on the part of the plaintiff to show that the second defendant has committed a wrong against the plaintiff as a result of which he the second defendant has made a gain. There is no credible evidence on two of the matters required to establish the claim. Indeed, Mr. Codlin has on several occasions in his submissions to the Court stated categorically that he is not placing any blame at the feet of Mr. Robinson whether for misrepresentation or fraud. All he was saying is that Mr. Robinson could have taken steps to ensure that Dr. White was notified of his interest. In my view Robinson has discharged that burden.

A requirement of the plaintiff to show a reason why the second defendant's receipt of the benefit of the coffee plantation was unjust is not an invitation to the plaintiff to appeal to the judge's subjective sense of justice. The Judge is not given a judicial discretion to do whatever notions of what is fair and just might dictate. What is crucial is an identification by the plaintiff of some evidence which grounds the claim. The unsolicited expenditure of money by the plaintiff upon the land does not by itself create in favour of the plaintiff any rights in or against the land or any personal right against the second defendant on the ground of injust enrichment or otherwise.

Should the property be held on Resulting Trust for the plaintiff?

In Gissing v. Gissing (1970) 3 WLR 255 Lord Diplock said inter alia:

" A resulting, implied or constructive trust - and it is not necessary for present purposes to distinguish between these three class of trust - is created by a transaction between the trustee and the cestui que trust in connection with the acquisition by the trustee of a legal estate of land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the cestui que trust a beneficial interest in the land acquired. And he will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land."

In so far as a resulting trust is concerned, no relationship has been alleged or proven between the plaintiff and the second defendant from which a resulting trust or indeed any trust could be said to arise. The plaintiff is a rival claimant who sets up only his rival claim and nothing else against the second defendant.

Additionally, the imposition of a resulting implied or constructive trust cannot be justified for the following reasons:

1. The plaintiff has an unassailable right to a judgment against the first defendant for all the damages of loss which it has suffered.
2. The second defendant had been deprived of developing the property which he bought in 1985 from the first defendant.
3. The plaintiff acted most imprudently, and precipitately in laying out vast sums on the land when all he had was a letter of possession to unregistered lands.
4. The plaintiff has not shown that he would not have planted the coffee on the lands had he been aware of the previous purchaser. (emphasis supplied)

5. Finally, particularly in matters affecting rights of property it is important that certainty in the law be preserved even in the face of a decision which appears to be hard as against one of the parties.

The plaintiff's claim against the second defendant is therefore dismissed.

Case for First Defendant

At the outset of the trial Mr. Maurice Frankson attended and informed the Court that neither himself nor Mrs. Margaret Forte Q.C. represented the first defendant anymore. The case proceeded without the assistance of Counsel.

In view of my judgment in favour of the second defendant the claim for specific performance against the first defendant is dismissed. The first defendant is in breach of contract with the plaintiff for having sold the property which was previously sold to the second defendant. The measure of damages for breach of a contract to purchase land is calculated by estimating the value of the loss of the bargain. The evidence led by the plaintiff as to the establishment costs of coffee, actual and projected yields and Mr. Langford's valuation of the property is estimated to be $20 million. Accordingly I make an award of $20M in damages in favour of the plaintiff against the first defendant.

Finally, there will be judgment for the plaintiff against the first defendant in the sum of $20M as damages with costs to be agreed or taxed. The second defendant will also be paid his costs by the first defendant which will be taxed if not agreed.

It only remains for me to thank learned Counsel on both sides for the clear and orderly manner in which the arguments were prepared and conducted. I am indebted to them for their help which has reduced the burden of my task.