Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1993 B.081

BETWEEN	BROADWAY IMPORT & EXPORT LIMITED	PLAINTIFF
AND	MICHAEL LEVY	FIRST DEFENDANT
AND	LIFE OF JAMAICA LIMITED	SECOND DEFENDANT

Mrs. P. Banka-Coker Q.C. and Charles Piper instructed by Messrs Piper & Samuda for Plaintiff.

Earl DeLisser and Anthony Pearson instructed by Playfair, Junor and Pearson for First Defendant.

Michael Hylton Q.C. & Miss Michelle Henry instructed by Myers, Fletcher & Gordon for Second Defendant.

Heard: February 1, 2, 3, 4, 5 & March 1, 1996

LANGRIN, J.

The facts in this case are simple but the answers they raise are complex.

By a Lease dated June 1, 1991 and made between the first defendant, Michael Levy and the plaintiff, Broadway Import Export Company Limited certain premises known as 13 Mandeville Plaza, Mandeville in the parish of Manchester, being the land registered at Volume 1048 Folio 73 of the Register Book of Title were demised to the plaintiff from April 1, 1991 for the term of five years at a rent of $120,000 per year.

By Clause 1 of the lease it was provided inter alia, that the first defendant granted to the plaintiff an option to purchase the said premises for the price of $2 Million on the condition that the option to purchase was exercisable within two years from April 1, 1991.

Since the 1st April, 1991, the plaintiff had been in actual occupation of the premises at all material times.

Around December 1992 the first defendant by his agent orally approached the plaintiff for a cancellation of the said Lease and offered to pay to the plaintiff the sum of $800,000 as consideration

and the plaintiff rejected the offer.

By letter dated January 21, 1993 the plaintiff exercised the option to purchase and by letter dated January 27, 1993 the plaintiff called upon the first defendant to advise as to how he intended to proceed to give effect to the said exercise of the option.

By letter dated 25th January, 1993 the first defendant's Attorneys-at-Law undertook to pay to the plaintiff sums amounting to $800,000, on condition that the plaintiff execute a document entitled "cancellation of a lease" which document was dated January 20, 1993. The said document was executed by the first defendant and received by the plaintiff with the said Attorney's letter dated 25th January, 1993.

The first defendant in or about October, 1992 entered into an agreement to sell the said premises to Life of Jamaica Limited, the second defendant for Four million four hundred thousand dollars ($4400,000) and caused the second defendant to register a caveat numbered 735992 against his title to the said premises in purported protection of its alleged interest therein.

By letter dated 4th February, 1993 the first defendant by his Attorney-at-Law gave notice to the plaintiff purportedly determining the plaintiff's tenancy and demanding possession of the said premises by May 31, 1993 prior to the expiration of the term created by the said lease.

As a result of these facts which are undisputed the plaintiff has caused a caveat to be registered against the first defendant's title to the said premises on February 9, 1993 and has obtained interim injunctions from the Court on March 2 and 16, 1993 and an interlocutory injunction on March 29, 1993 by which the first defendant was restrained until this trial from interfering with the plaintiff's right of possession and from otherwise dealing with the said premises.

L E A S E

The Registration of Titles Act, Sec.94 provides:-

> "Any freehold land under the operation of this Act may be leased for any term not being less than one year by the execution of a lease thereof in the form in the Sixth Schedule, and the registration of such lease under this

> Act; but no lease of any land subject to a mortgage or charge shall be valid or binding against the mortgagee or annuitant unless he shall have consented in writing to such lease prior to the same being registered."

Therefore to create a legal lease a lease must be registered. This lease was not registered. The question which must now be considered is what is the effect of an unregistered lease which contains an option to purchase and the effect of that option.

Mr Hylton submitted that the failure of the plaintiff to register the lease cannot create an interest in land and consequently the option would fail for a similar reason. He further submitted that prior to the exercise of the option to purchase, the plaintiff's interest in the land was that of a tenant, not a purchaser.

I cannot accept these submissions advanced by him since at Common law an unsealed lease for a term exceeding three years may be regarded in equity as an agreement for a lease and provided that the agreement is one of which equity is prepared to grant specific performance equity will treat the parties as if the lease had actually been granted. This important doctrine, the doctrine of Walsh v. Lonsdale is based on the equitable maxim that equity looks on that as done which ought to be done and it extends to any enforceable contract to create or convey a legal estate in land.

It is settled law that an equitable lease is not as good as a legal lease. An equitable lease is liable to be destroyed by a bonafide purchaser of a legal estate for value without notice.

OPTION

An option to purchase is the right to purchase a particular estate in land for a particular sum within a particular period. The holder of the option can call for the sale of the land to him for the agreed price at any time within the agreed period. Thus, with an option to purchase, the option holder is the prime mover. The option agreement constitutes an irrevocable offer to sell and once the plaintiff had accepted that offer by exercising the option, a contract had come into being for the sale of the premises for $2 million dollars.

In the case of Webb v. Pollmount Limited 1965 1 Ch. p.584. Ungoed-Thomas J in a judgment dealing with a clause of a lease which provided inter alia that the plaintiff should have an option during

the term of the lease to purchase the freehold of the property had this to say at p.596:

> "An option to purchase is an interest in the land in respect of which it is exercisable, whether contained in a lease or not. If contained in a lease, it differs from such an option not so contained only in that the parties are landlord and tenant and it is part of the terms on which the lease is granted. Though contained in a lease, it is collateral and does not "touch" or "concern" or "affect" the land "regarded as the subject matter of the lease", but is wholly outside the relation of landlord and tenant ....."

Since an option to purchase is an interest in land it was capable of being exercised and enforced against the land in the hands of any person who acquired it other than a purchaser for value without notice.

Similar views pertaining to an option are contained in Caribbean Asbestos Products Limited v. Andre Lopez etal (1974) 21 WIR p.462 C.A. by Luckhoo P. Ag. when at p.466 he had this to say:

> "An option when granted for value confers a right or privilege in the optionee to call for the sale to him of the land in accordance with the conditions specified for the exercise of the option and the lessor undertakes that he will not within the time, if any, specified in the option clause, which is indeed a separate contract deal with the land in anyway inconsistent with the right of the optionee to purchase the land together with a binding agreement not to revoke the offer during the time, if any, specified in the option. If the offer is accepted within the time specified a contract of sale is made .... If the lessor in breach of his agreement purports to revoke his offer his revocation is ineffectual to prevent the formation of a contract by the acceptance of the offer within the specified time."

Accordingly, the purchaser of the property in the instant case has a similar interest to the holder of the option even before the option was exercised.

Mr. DeLisser in a very ingenious way argued that because the present option did not have a monetary consideration then the consideration must be the performance and observance of the covenants, conditions and stipulations set out in the lease. If on the other hand this is not so then there must be consideration independent of the lease document. At paragraph 4 of the defence of first defendant

there is an admission of the grant of an option. That being so Counsel cannot now argue that there was no consideration for the option since he is bound by his pleadings. But he argues in the absence of a monetary consideration the consideration for the option must be referred to the conditions and covenants in the lease. He cited authorities to show that in a number of leases with option to purchase clauses monetary considerations were present.

Since the mere performance of the lease by the tenant may be the consideration for the option I will have to examine the Lease to see whether counsel's contention that the option is subject to the covenants, conditions and stipulation is correct.

Clause 1 of Lease states:

> "The Lessor in consideration of the rents hereinafter reserved and of the Lessee covenants herein contained hereby lets and the lessee hereby takes All those parts of the premises situate at 13 Mandeville Plaza, Mandeville in the parish of Manchester being the whole and being the building on the land comprised in the said certificate of title (hereinafter called "the leased premises") for the term of Five (5) years commencing on and from the 1st day of April, in the year One thousand Nine Hundred and Ninety one, Yeilding AND PAYING therefore rent at the rate of TEN THOUSAND DOLLARS ($10,000.00) per month, payable one year in advance, the sum of which is hereby acknowledged by the LESSOR and thereafter to be paid on a basis subject to the covenants and powers implied under the Registration of Titles Act unless hereby negatived or modified and subject also to the covenants, conditions and stipulations hereinafter contained with an option to purchase the leased premises within TWO YEARS from the first day of April in the year One Thousand Nine Hundred and Ninety One, that the sale price of the building will be TWO MILLION DOLLARS NET."

The most formidable argument made against the first defendant rests on the plain meaning of Clause One. The essence of Mr. DeLisser's argument is that the option must be subject to the preceding references to covenants, conditions and stipulation. With profound respect to the skill with which his argument was advanced I am afraid I cannot accept it. When one examines Clause 1 of the Lease it appears quite clear that the option is not related to the preceding parts of the clause. Not only that clause should be examined, but indeed the whole Lease agreement must be examined. I therefore turn to Clause

3(e) pertaining to the option to renew the lease and see what assistance can be derived from that clause. Here the condition precedent to the exercise of that option to renew is clearly stated as an observance of the covenants contained in the lease. It seems clear therefore that the option to purchase granted in Clause 1 is devoid of a condition precedent except in relation to the giving of notice by the holder of the option.

The evidence in relation to the subletting of the premises has no relevance to the validity of the option to purchase as well as its exercise. On a true construction of Clause 1 I find no connection between the option and the preceding references. Accordingly, there is no condition precedent to the exercise of the option to purchase except to give the notice.

PROPRIETORY ESTOPPEL

The doctrine of proprietory estoppel was stated in the celebrated case of Ramsden v. Dyson 1866 L.R. 129. H.L. Although it is frequently quoted with approval, the scope of the doctrine has been considerably extended in recent times.

The doctrine is stated as follows:-

Where the owner of land knowingly encourages another to act or acquiesces in his acting to his detriment on the understanding that he is to have an interest in that land, the owner will subsequently be estopped from asserting his strict legal rights and may indeed be compelled to give effect to the equity that has arisen in favour of that other. The doctrine may still apply where the owner was ignorant of the true legal position at the time he encouraged the other person to act.

Would it not be unconscionable to allow him to insist on his strict legal right by saying that due to any lack of formalities the lease is a nullity? That is the question.

I make the following findings of fact:

(1) On or about the 1st April, 1991 on receipt of the rental reserved under the said lease, the first defendant delivered possession of the said premises to the plaintiff and has continued to accept the rental reserved thereunder, including

the rental payable for the period 1st April 1993 to 31st March, 1994;

(2) The first defendant executed the Lease and delivered same to the plaintiff's servant or agent Mr. Richard Morgan for the purpose of having same formally executed and stamped by the plaintiff, which in fact the plaintiff did.

(3) By letter dated May 4, 1993 the first defendant by his Attorney-at-Law, offered the plaintiff the sum of One Million dollars to refrain from relying upon the option to purchase contained in the said lease which offer the plaintiff rejected by letter dated May 12, 1993.

(4) The first defendant, by his said Attorney-at-Law negotiated the plaintiff's manager's cheques in the sum of $2,286,491.00 which were formally tendered by letter dated July 22, 1993 in satisfaction of the plaintiff's liability to him under the said option to purchase and has thereby accepted on behalf of the first defendant the payment made by the plaintiff in fulfillment of its obligations under the said option to purchase.

In view of those findings of fact it is my judgment that the option to purchase the said premises was a valid one and was correctly exercised by the plaintiff.

The first defendant has waved any right he may have in saying that the lease was a nullity.

I reject the submission that because the first defendant demonstrated an unwillingness to sell the premises for the price stated in the option he was free to refuse the valid exercise of the option.

Effect of Section 71- Registration of Titles Act

Section 71 of the Registration of Titles Act provides as follows:

> "Except in the case of fraud, no person contracting or dealing with, or taking or proposing to take a transfer, from the proprietor of any registered land, lease, mortgage or charge, shall be required or in any manner concerned to enquire or ascertain the circumstances under, or the consideration for, which such proprietor or any persons proprietor thereof was registered, or to see to the application of any purchase or considera- tion money, or shall be affected by notice,

> actual or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud."

It was argued on behalf of Life of Jamaica that since the Company had contracted to purchase from the registered proprietor it was protected from notice of outstanding equitable interests by virtue of Section 71 of the Act even before registration of its transfer.

In support of his argument he relied on Barclays Bank v. Administrator General for Jamaica (1973) 20 WIR 344 Geon Contractors And Associates Limited v. National Commercial Bank and Gillian Holdings Limited (unreported Suit No. E.294/90) and Midland Bank Trust Co. Ltd. v. Green (1981) 1 ALL ER 153.

These cases are easily distinguishable from the case before me as the facts in those cases were different from the instant case.

Section 71 deals with registered interests and states that these interests when registered will be protected from all interests which are unregistered even if the registered proprietor had notice of them. It cannot be gainsaid that the interests for which Mr. Hylton was seeking protection was unregistered.

These unregistered interests which are equitable in nature are governed by the doctrine of notice, that is they are binding on the whole world except a bonafide purchaser of a legal estate for value without notice. This involves the purchaser in making inquiries and inspections on the land and it was in order to obviate the necessity for such steps to be taken that the system of Land Charges Registration was introduced in England in 1925. The purpose of the Land Registration System is to do away with the doctrine of Notice.

The case of Midland Bank vs. Green (supra) cited in support of his argument is totally irrelevant to Section 71 of the Registration of Titles Act. It was appropriately related to the Land Charges Act in England.

Defendant's interpretation of Sec.71 of Act is wrong in law. The wording of Sec.43 of the Australian Act is in pari materia to the

provisions of Sec.71 of the Registration of Titles Act. The interpretation of Sec.71 in the case of Barclays Bank vs. Administrator General and Ransford Hamilton (1973) 20 WIR 344 is consistent with the view that only registered interests are protected by Section 71 and therefore this Court is bound by it.

The facts in that case are that GR entered into an agreement to sell land to RH on November 28, 1958. RH entered into possession of the land in November 1958. In 1960 GR applied to the appellant bank for a loan and offered the registered title as security. GR showed the appellant's manager the land and executed an equitable mortgage and deposited the title as security. The bank made a search at the Registrar of Titles and that search revealed that there was no caveat outstanding. On February 8, 1960 the bank caused a caveat to be lodged to protect its interest and thereafter GR was allowed to have an overdraft facility in relation to a new current account. In 1961 GR died intestate owing the appellant over $1,000.00 and in 1967 the appellant commenced proceedings for a declaration that its equitable mortgage ranked in priority to the rights of RH. RH counterclaimed for a declaration in his favour. It was held by the Court of Appeal that the appellant bank's interest ranked in priority to that of R.H.

In my view the Court applied the doctrine of notice and found for the Bank on the facts as presented in that case.

I am fortified in my view as to the effect of Section 71 because of the case of IAC Finance Limited v. Courtenay 110 CLR at p.569.

In that case, the Learned Judge in interpreting Sec.43 of the Australian Act which is identical to our Section 71 said at page 71 - "Until registration a person who has dealt with a registered proprietor cannot have more than an equitable interest for until that event even a registrable instrument cannot pass the estate or interest which it specifies. After registration he holds free from all encumbrances, liens, estates or interests not notified on his certificate of title.

The Learned Judge at p.572 of his judgment went on to say: "It is settled law that the immunity thus conferred, upon a purchaser for example is afforded to him if and when he becomes registered and not before." See Lapin v. Abigail 1930 44 CLR. p.66.

The subject matter of the dispute involves a registered certificate of Title. However, the two competing claims are equitable interests in land and neither interest is registered. Whereas in unregistered conveyancing the transfer of a legal estate is completed by the deed of transfer usually called the conveyance while in registered conveyancing the transfer is effectual and complete only when the transferee is recorded in the Land Register as the new proprietor. The purchaser for value takes the legal estate subject to entries on the register but free from all other estates and interests whatsoever. He is not to be concerned with matters not protected on the register whether or not he has notice of them.

The submission by Mr. Hylton that a person who enters into an agreement to purchase a legal estate is protected by Section 71 of the Registration of Titles Act is misconceived and must be rejected.

Priority of competing unregistered equitable interests

I now come to the fulcrum of this case. 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 claiming to be a bona fide purchaser for value of a legal estate without notice, either actual or constructive.

A number of authorities dealing with competing equitable interests under the Torrens system in Australia were cited by Mrs. Benka-Coker including an article entitled "Competing Equitable Interests in Land under the Torrens Systems" Vol.45, Australia Law Journal, August 1971 p.396. Fox J.A. in the case of Barclays Bank

vs. Administrator General (supra) stated the principles evolved in Australia which were relevant to that case. In my view the same principles are relevant to the instant case and so I now restate them.

(1) Priority afforded by time to an equitable interest in registered land is not lost unless there is a failure to lodge a caveat.

(2) An omission to caveat will not of itself necessarily warrant postponement of a prior equitable interest;

(3) Postponement occurs only if by his act or omission the holder of the prior equitable interest 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;

(4) The acts or omissions of the prior holder must also have either directly misled the holder of the later equitable interest, or must have amounted to an arming of a third person with power to go out in the world under false colours and thereby to be able to mislead or to deceive the subsequent holder;

(5) If the holder of a later equitable interest knows at the time he acquires his interest that an earlier interest exists, the holder of that prior interest will not be postponed. (underlining mine)

The cases of Butler v. Fairclough (1970) 23 CLR 78 and Abigail v. Lapin (1934) AC. 491 were relied on among others in the formulation of the above principles.

The chronology of events in which these principles are to be applied are as follows:

The plaintiff entered into a five year lease agreement with the first defendant on June 1, 1991. The lease agreement contained an option to purchase. The lease agreement was not registered and no caveat was lodged. The first defendant entered into a sale agreement with the second defendant in September of 1992. At the time, the plaintiff was in possession of the premises the second defendant was aware of his tenancy. On the 14th October, 1992 the second defendant lodged a caveat claiming an interest under and by virtue of the agreement for sale. The plaintiff exercised the option to purchase on January 21, 1993 and lodged a caveat on February 9, 1993

claiming an interest pursuant to the option to purchase which it exercised. The question then seems to be: Had the plaintiff when the second defendant acquired his equitable interest taken or failed to take all reasonable steps to prevent the first defendant from dealing with the land without notice of the plaintiff's equitable interest? Alternatively can the second defendant rely on the criteria extracted from Professor Sackville's Article dealing with competing equitable interests in land under the Torrens System in Australia and approved by Fox JA. Does the Registration of Titles Act exude a clear policy as to the effect of failing to lodge a caveat in determining priority between equitable interests. It is quite understandable why the current legislation drafted in a previous era did not consider the issue with any great care. However, the current economic climate with rising prices produce an environment where land prices increase rapidly. The Court in an effort to protect bonafide purchasers without notice of prior equitable interests cannot provide novel requirements designed to assist the effective working of the system. A clear system of land charges registration should be devised.

It does not appear to be a settled practice for all owners of equitable interests to lodge caveats. Under the Torrens system the caveat does not add to existing rights, its purpose being to suspend registration until an opportunity is given to ascertain the parties rights. Consequently a failure to conform to a practice which is not settled would not lead those who searched the register to believe that there was no outstanding equity.

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.

In order to postpone a prior encumbrancer because of his failure to lodge a caveat or failure to register the lease it was necessary to show (1) that his failure was a breach of duty to a

subsequent purchaser and (2) that the purchaser was induced to act to his prejudice by the failure. See J & H Just (Holdings) Property Limited v. Bank of New South Wales & Ors. (1969) 90 WN. 571 at p.576.

In light of the clear and undisputed evidence that the second defendant knew that the plaintiff was a tenant, was Life of Jamaica justified in accepting the uncorroborated assertion of the first defendant that the plaintiff's tenancy was a monthly one only and that he had been given notice to quit or should Life of Jamaica make enquiries from the tenant as to his interest in the land? This leads me to an examination of the question of Notice.

Doctrine of Notice

It is common ground that Life of Jamaica had actual knowledge of the plaintiff's occupation of the premises.

A purchaser is bound unless he is a bonafide purchaser of the legal estate for value without actual or constructive notice. A person has constructive notice of all facts of which he would have acquired actual notice had he made those enquiries and inspections which he ought reasonably to have made.

The degrees of knowledge recognised by law are:

(1) Actual knowledge

(2) Constructive knowledge which is a state of mind described by neglect to make such enquiries as a reasonable and prudent man would make.

There is no evidence to support a finding that prior to the execution of the contract, Life of Jamaica actually knew that there was an option attached to the lease. On the contrary, Life of Jamaica was informed by the first defendant that the plaintiff was a mere monthly tenant and a notice would shortly be given to the tenant to vacate the premises. No inquiry was made of the tenant in occupation.

Mrs. Benka-Coker submitted that because Life of Jamaica had actual knowledge of the plaintiff's occupation of the premises it was a necessary factual base on which constructive knowledge of the plaintiff's interest in the land was inferred. She cited the cases of Barnhart v. Greenshields (1853) 9 Moo P.CC. 18, Roper v. Taylor's Garage (1951) 2 TLR 284 and Hunt v. Luck (1902) 1 Chan. 428.

The weight of authority supports the proposition that constructive knowledge of a tenant's interest in land required as a base evidence that the person to be affected had "actual knowledge" of the tenant's possession of the land. He must also inspect the land and make inquiries of all persons in actual occupation of the land regarding any rights that they may claim.

Under the rule in Hunt v. Luck a tenant's occupation is notice of all that tenants rights. Obviously if an occupier withholds information about his interest in order to induce the purchaser to acquire the property he would be estopped from claiming an interest in priority to the purchaser.

When it is clear from an inspection of the land as in the present case coupled with an admission on interrogatories that a tenant is in occupation, a purchaser must make inquiries of that person and he is not entitled to rely solely on what the vendor may tell him about that tenant's rights.

In my judgment, the second defendant had not been prejudiced by the existence of the prior equitable interest, namely the option to purchase since it was always within his power to ascertain the rights of the plaintiff tenant of whom on his own admission he was aware had occupied the premises. The absence of a caveat by the plaintiff in these circumstances did not induce the second defendant to enter into the agreement to purchase the land. The act or default of the prior equitable owner must be such as to make it inequitable as between him and the subsequent equitable owner that he should retain his initial priority. For these reasons which I have given the plaintiff's priority cannot be displaced by the second defendant's subsequent equitable interest.

Specific Performance

I turn now to the question of whether this Court ought to grant specific performance to the plaintiff based upon the Court's equitable jurisdiction.

The evidence is that Mr. Morgan acting on behalf of the plaintiff took away the original and copy of the lease to be signed by the directors of the plaintiff company. It was not denied by the

first defendant that Mr. Morgan had taken away the documents to Kingston to be signed. There is no evidence of any conduct on the part of the plaintiff that would taint its conduct in a material way since the defendant admitted signing the lease. Mr. DeLisser submitted with much force the well known maxim that: "He who comes to equity must come with clean hands" i.e. where unfairness has characterized the conduct of the plaintiff.

I find as a fact that there was no unfairness or impropriety which characterized the conduct of the plaintiff. It was the first defendant who admitted signing the lease and placed the plaintiff in possession under the terms of the lease and accepted rent for three years. The irregularities demonstrated in witnessing the signatures in the lease while frowned upon by the court, has no application to the principle of (unfairness) relied on by Mr. DeLisser.

The first defendant also relied on a breach of covenant in the lease and more particularly on the covenant which states as follows:

"Not to carry on or suffered to be carried on any part of leased premises any trade or business other than that of Broadway Limited without the written consent of the Lessor first had and obtained".

While I find as a fact that there was a breach of this covenant in the lease, it must be pointed out that the option to purchase is collateral to the lease. The conduct of the plaintiff which is complained of is not connected to the contract pertaining to the option to purchase the premises. See Modern Equity 13th Ed. p.676. Further because no complaint was made to the plaintiff relating to this breach at any time the first defendant must be taken to have waved this right.

I am not satisfied that the equitable remedy of Specific Performance should be refused in this case and I so grant it to the plaintiff.

Damages

The measure of damages for breach of a contract to purchase land is calculated by estimating the value of the loss of the bargain.

There is an exception to this where the breach was caused by a defect in title which the vendor could not remove and in such a case under the rule in Bain v. Fothergill (1873) the purchaser could only claim his lost conveyancying expenses. The premises is now valued at $8.5 million.

In so far as the first defendant is concerned the plaintiff has not suffered a loss in bargain because I have granted specific performance to the plaintiff against the first defendant. No award of damages will be made to the plaintiff against the first defendant.

The first defendant was unable to pass title to the second defendant because of the dispute in respect of the priority of competing equitable interests. However, there was no evidence from the second defendant of its inability to mitigate its loss by buying elsewhere. Besides too the second defendant had actual knowledge of the plaintiff's occupation and was affixed with constructive notice of the tenant's right including the option to purchase. In those circumstances the second defendant ought reasonably to have foreseen that such loss was likely to occur. The second defendant will only be entitled to a refund of its deposit of $880,000.00 with interest at 25% per annum.

Summary

Accordingly I give judgment for the plaintiff against the first defendant and make the following Orders:

A. 1. A Declaration that the Lease Agreement dated the 1st June, 1991 between the plaintiff as Lessee and the first defendant as lessor in respect of premises situated at 13 Mandeville Plaza, Mandeville in the parish of Manchester being the premises registered at Volume 1048 Folio 73 of the Register Book of Titles is valid and enforceable by the plaintiff against the first defendant.

2. A declaration that the option to purchase contained in the aforesaid Lease Agreement is valid and enforceable by the plaintiff against the defendant.

3. A declaration that the plaintiff validly exercised the aforementioned option to purchase by letter dated January 21, 1993 from the plaintiff to the defendant.

4. An injunction restraining the defendant whether by himself his servant or agent or otherwise from interfering with the plaintiff's right to possession and/or quiet enjoyment of the aforesaid premises.

5. An Order for Specific Performance of the option to purchase in the Lease dated June 1, 1991 between the defendant as Lessor and the plaintiff as Lessee.

B. There is also judgment for the plaintiff against the second defendant.

C. There will be judgment for the second defendant against the first defendant. The first defendant will refund the deposit of $880,000 with interest at 25% per annum.

Costs

The plaintiff will recover its costs from both defendants. But the second defendant will recover whatever costs it pays to the plaintiff and will recover its own costs from the first defendant.

All these costs to be agreed or taxed.

It only remains for me to thank learned counsel on both sides for the clear and orderly manner in which the arguments were conducted. Their help has lessened the burden of my task.