

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA****CLAIM NO. 2010 HCV 05191**

BETWEEN	COSMO BROOKS	CLAIMANT
A N D	HUGH ASTLEY HENDRICKS	DEFENDANT

Contract – Sale of Land – Specific Performance – Whether contract enforceable – whether occupation prior to completion unlawful – whether contract valid

Marlene Uter, Camilla Bob-Semple instructed by Alton Morgan & Company for the Claimant

Michael Brown instructed by Michael Erskine & Co. for Defendants.

Heard: 19th February, 2013, 5th April 2013 & 31st May 2013

CORAM: JUSTICE DAVID BATTS QC

[1] This action commenced by Fixed Date Claim supported by affidavit. There have been several interlocutory Orders made culminating of course in trial dates. I heard the matter and now deliver judgment. However I must voice some displeasure that parties elect to use Fixed Date Claim Forms in matters such as this which involve contested factual issues, and trials in open Court. Affidavit evidence really is unsuited for the purpose. Ordinary claims with statements of case discovery orders and witness statements make for better identification of issues and a smoother trial process. Nevertheless given that a trial date was fixed before me I proceeded with the trial, further delays would have been to no one's benefit.

[2] By an Amended Fixed Date Claim Form filed on the 11th May 2011 the Claimant sought the following remedies:

- i) A declaration that all the receipts for deposit and further payments made by the Claimant to the Defendant and the unsigned Agreements for sale presented to the Defendant by the Claimant taken together, constitute one Agreement for the sale by the Defendant to the Claimant of one acre of land, part of Cairo in the parish of Westmoreland recorded in the Island Record Office at Liber New Series 615 Folio 381.
- ii) Specific Performance of the Agreement for the sale of the said land described herein.
- iii) Vacant possession and the removal of all tenants currently on the said land.
- iv) Rents collected from the tenants, and not accounted for after the 4th day of December 2004.
- v) Damages for breach of statutory duty to deliver registered Title pursuant to section 49 of the Registration of Titles Act.
- vi) Damages for breach of contract
- vii) Attorneys costs and,
- viii) Such further and/or other relief as this Honourable Court may deem just.

3. An acknowledgement of service was entered by the Defendant on the 7th April 2011. A document entitled "Counterclaim" was filed by the Defendant on the 7th April, 2011, in that document the Defendant alleges:

- i) The Defendant is the beneficial owner in possession of land at Cairo in the parish of Westmoreland herein, subject of the suit herein.
- ii) The Claimant have (sic) since December 2010 trespassed on the said land and fenced a section of the said land, placed a container thereon and is building a concrete wall around a section of the said land.

- iii) The Defendant is prevented from renting the said land for the hosting of weddings, parties and other events
 - iv) The Defendant has suffered grave losses as a result of the trespass of the Claimant.
 - v) The Defendant will rely on his affidavit herein dated the (sic) day of 2011, in respect of this counterclaim and the Defendant claims
 - Damages for trespass
 - Interest
 - Costs
 - An injunction restraining the Claimant and his servants and or agents from committing further trespass on the said land herein.
4. Both parties to the suit filed Affidavits each with several attachments marked exhibits. I will treat with these affidavits in greater detail later in this judgment.
5. On the 12th May 2011 the Supreme Court made an order which read as follows:

"Upon the Notice of Application for Court Orders filed by the Applicant and the counterclaim filed by the Respondent coming on for hearing this day and after hearing Miss Merlene Uter Attorney at law instructed by Alton E. Morgan & Co. the Attorneys at law on the record for the Applicant and Mr. Michael Brown Attorney at law instructed by Michael B. P. Erskine & Co. for the Attorneys at law on record for the Respondent.

IT IS THIS DAY ADJUDGED THAT:

1. Application for injunctive relief granted to the Applicant Mr. Cosmos Brooks, until trial on the 20th day of October, 2011.
 2. Application for injunction by the Respondent refused
 3. The Applicant undertakes to abide by any order as to damages caused by the granting or extension of the order made by this Honourable Court in this matter on the 12th day of May 2011.
6. On the 26 October 2011 the court made the following orders,

1. Permission to the Claimant to file and serve three affidavits from witnesses by 16th December 2011.
2. Permission to the Defendant to respond to those affidavits, if so advised, by 20th January 2012.
3. All affiants are to attend for cross examination
4. All affidavits are to be regarded as witness statements.
5. Submissions to be filed and served b y the 10th April 2012
6. Hearing adjourned to the 17th April 2012 for one day in open court.
7. Order of Justice Morrison dated 12th May 2011 extended to trial on 17th April 2012.
8. Claimant's attorney to prepare, file and serve Formal Order.

- [7] The trial commenced before me on the 19th February 2013. In his opening the claimant's counsel stated this was an action for the specific performance of an agreement for the sale of 1 acre of land. The parties said he, entered into an oral agreement initially. After negotiations the agreement was reduced to writing. Receipts evidence the payment of a deposit and other payments. The Claimant is the purchaser and brings this claim because the Defendant vendor has refused to complete, indeed the Defendant refused to sign the agreement for sale. The Claimant contends that although no agreement for sale was signed there is sufficient evidence of a note or memorandum in writing so as to allow for an enforceable agreement.
8. The Claimant, Cosmo Brooks, was the first witness called. He stated that he was in the car sales business. His affidavits dated the 22nd October 2010 and 10th May 2011 were allowed to stand as his Evidence in Chief. A Bundle of Documents was by Consent tendered as **Exhibit I** with the documents labelled (a) to (r).
9. The Claimant's attorney requested and was granted, permission to amplify. The Claimant described the land in question as well as his relationship with the Defendant. The following exchange occurred:

"Q. Mr. Hendricks said he placed question marks on the agreement and handed it back to you.

A. We had discussions about the 1 acre as far back May 2004. As soon as we had the agreement verbally Mr. Hendricks asked for payments. These payments albeit small continued. In or about December 2004 we decided to put agreement in writing. It is not true he placed question marks on agreement and handed back to me. He did not return the money I paid. He provided no evidence he was obtaining title."

[10] The Affidavits of the Claimant reveal the following story.

- a. On the 1st November 2000 the Claimant entered into a lease agreement with the Defendant for land on which to operate his car dealership.
- b. He subsequently negotiated for the purchase of one acre of land inclusive of the portion he had used.
- c. US \$60,000 was the agreed price
- d. His attorneys prepared the sale agreement and he presented it to the Defendant.
- e. The Defendant promised to return it in 3 weeks.
- f. On the 4th December 2004 he paid US 10,000 to the Defendant as a deposit on the purchase and a signed receipt was given.
- g. The Defendant's explanation for not returning the signed agreement was that he was in the process of splintering the parent title and obtaining individual titles to the various lots.
- h. The Claimant continued to make frequent and regular payments towards the purchase price.
- i. After several delays and excuses the Defendant told the Claimant he was no longer going to sell the land to him.
- j. the Claimant has established goodwill and place recognition in the location.
- k. He has made improvements to the land by adding office space.
- l. He has stopped making interim payments for fear he will not get his title.
- m. That his attorneys at law having investigated the title informed him that there is a document vesting the land registered at Vol. 615 Folio 381 in the names of Hugh Astley Henriques (the Defendant) Michael Anthony Henriques and Heather Elizabeth Bodden.

- n. He is informed by his attorneys that the Defendant now owns 41.5 acres of land including the acre he agreed to sell.
 - o. There were other proceedings between the parties in which injunctive relief was sought.
 - p. That by letter dated 8th April 2011 the Claimants attorneys sent to the Defendant's attorneys a Notice to complete making time of the essence.
 - q. That he has been a tenant of the Respondent since the year 2000 and the rental is now \$132,000.
 - r. He denies having an arrangement to pay US 45,000 on signing of the agreement for sale.
 - s. He was learning for the first time by the Defendants' affidavit dated 7th April 2011 that the Defendant had concerns about the agreement for sale.
- [11] When cross examined the Claimant stated that the instructions to his attorney referred to in Para 5 of his affidavit dated 28th October 2011 were given by a telephone conference between the Defendant, himself and Mrs. J. Stanbury the Claimant's lawyer. He said the Defendant indicated he did not wish his own lawyer. It was suggested to him and he denied that he had presented the Defendant with a document. The witness denied that the Defendant told him he would not sign it because it had 3 vendors on it. He denied that a US\$45,000 deposit was requested. It was suggested that a document stating US\$40,000 was prepared to avoid stamp duties and he said "I did not do that."
- [12] The witness agreed that the sale price agreed was US\$60,000.00. When shown Exhibit 2, he admitted it had a sale price of US\$40,000. When pressed as to which agreement was presented to the Defendant, the witness said,
- "A. now saying the \$40,000.00 draft agreement was presented to him but it is not the one I insisted on him signing. It was presented in the course of negotiation.
- Q. It is not true you presented for signature is that true
- A. It was presented to him but it was not the one we finally decided upon. We finally decided upon \$60,000."

- [13] The witness was asked to describe the boundaries and then agreed that he was now in possession of the 1 acre. He admitted that the Defendant did not put him in possession. He was asked how did he get possession and responded,

'I entered into agreement for purchase of 1 acre of land. I paid him my deposit. Sale agreement was prepared. 3 hard copies were presented to him by me and he said that he would have it signed and returned. That was 2004. He kept promising to return and he would look about title. He said he would let me use the ranch (the building I described previously).

I allowed him when here in Jamaica and because I wanted to coherent plan of development. He ask me to wait because he working on title. When I saw he was not living up to his word I was always ready and willing to pay him the 30 or 36000 whatever is in the agreement as per my letter of 2009. I met him in 2010 when he was on the island. I kept calling him and I could not take it anymore. He gave me the name Michael Brown as his attorney. I decided I had enough. I was losing things, thieves cut – break fence stole items. I began to fence the entire property.

I called him before I did that in the States. He said why you don't take a part of the front. I said that is not the agreement I had to secure my investment. Cars were on the lot. So I started to fence the entire property."

- [14] I have quoted extensively from this portion as it reveals the Claimant's state of mind. It was suggested to the witness that the other payments were applied to rental. This was denied. It was suggested that he owed 2 years rental in 2007 and this was denied. He was cross-examined on Exhibit 1 (n) (minutes of the 9th December 2006). The following exchange occurred.

"Q. That \$142,800 you deducted it from rent owing

A. Yes, because the 4th December 2004 the J\$30,000 was credited as money advanced for sale so was not

applied as lease. All this was done to streamline the accounting because occasionally Mr. Hendricks would arrive and hand him money. I did not object.

Because account was confirmed and these ad hoc paid in perspective small payments. Once the US\$10,000.00 was others also paid so we put everything and presented in a letter to Mr. Hendricks."

- [15] It was then brought to the witness's attention that in exhibit 1(n) the \$30,000 was also part of the \$105,000. He admitted that and the following exchange occurred,

"Q. so you also took back \$30,000

A. there is some confusion with tables. The asterisk in previous would explain. This suggests it was."

- [16] In re-examination the following exchange occurred:

"Q. The \$30,000 which Counsel suggested you took back could you explain what happened.

A. In tidying up the account my recollection it was included as a lease payment. There were other payments like J \$45,000.00 in 2007. That was not in the table but in receipts. Not applied to any lease."

- [17] Leon Allen the sales Manager of Cosmo Auto then gave evidence. His affidavit dated 13th December 2011 stood as his evidence in chief. He was not cross examined. In that affidavit he stated that he took part in the negotiations between Mr. Brooks (the Claimant) and Mr. Hendricks (the Defendant) concerning the purchase of 1 acre of land. An oral agreement for this was entered into. In 2004 he was present when Mr. Brooks paid Mr. Hendricks US \$10,000.00 and a receipt was drawn up which he witnessed. He was also responsible for the delivery to Mr. Hendricks of varies sums of money at the request of Mr. Brooks. There were several meetings and one

of them took place on the 9th December 2006. The witness said Mr. Brooks, Mr. Hendricks himself along with others were at that meeting. Mr. Hendricks told Mr. Brooks the sale was in progress and he was waiting for his lawyers to carry through the transaction. Mr Hendricks said all requirements requested by the Commissioner of Lands had been provided and he was awaiting approval. He said Mr. Brooks promised to confirm this with his lawyer who he named as Mr. Wright. He also told Mr. Brooks that tenant Massey had been given notice and tenant Dussie would not be a problem when the time came. He has heard Mr. Hendricks telling Mr. Brooks on different occasions that the sale was in process. The witness also stated that he was present when Mr. Brooks told Mr. Hendricks that he would make no more payments until Mr. Hendricks provided evidence that the transaction was being attended to. Mr. Hendricks he says became very upset and left the meeting.

18. Michele Walford was the next witness. She did not wish to be sworn because she said she was an Adventist and it was her personal choice. The witness was therefore allowed to affirm. Her affidavit dated 14th December 2011 was allowed to stand as her evidence in chief. She too was not cross examined. Her affidavit states that she was engaged by Cosmo Auto Imports Ltd to verify accounts. In the period 2003 to 2009 she witnessed the ongoing relationship between Mr. Brooks and Mr. Hendricks. On one occasion a meeting was held between Mr Brooks and Mr Hendricks at Rockcliffe Hotel Negril Westmoreland at which she was present. She prepared the notes of the meeting. These were dated 8th April 2007.
19. The case for the Claimant was then closed. In opening the Defendant's attorney stated:

"The Defendant is saying that there is no signed agreement between the parties and that the agreement did not come into effect.

The Defendant has filed a counterclaim for unlawful trespass and possession. His claim is supported by an affidavit dated 7th of April 2011 which is subject to the same order of Beswick J. The Defendant will not be calling any other witnesses."

- [20] The Defendant, Hugh Hendricks, was sworn. He indicated that he now resides in the United States of America. His affidavit dated the 7th April 2011 was allowed to stand as his evidence in chief pursuant to the Order of Beswick J. The Defendant's counsel applied for leave to give evidence relevant to his counter claim and the Claimant indicated he had no objection. Permission was therefore granted. The witness was asked who now occupied the land and he said Cosmo Brooks. He stated that he was not allowed to enter it. When in Jamaica he says he stays at hotels. He denied ever being in a conference call with Mrs. Stanbury and was emphatic that he did not know the lady. The following important exchange then occurred,

"Q. How many agreements were presented to you

A. The first was presented for \$40,000.00. He said he would give me \$20,000 under the table. I told him I would not be a part of that he sent this one by TARA. (Witness produces a document.)

Obj: The claimant objects to this document being entered in evidence. Matter was filed in 2010 and document was not exhibited to any affidavit.

J: Was there an Order for discovery

Obj: No however by Order dated 20th November 2011 affidavits were ordered.

J: I will allow [the document is relevant and there is no b reach of a discovery order]."

- [21] In consequence Exhibit 3 being a brown envelope with 2 faxed documents dated 13th August 2004 was admitted into evidence.

[22] The Defendants affidavit dated 7th April 2011 contains the following relevant evidence:

- a) That he is the beneficial owner along with his brother Michael Anthony Hendricks and his sister Heather Elizabeth Bodden of land which contains approximately 115 acres part of Cairo Penn in Westmoreland being beneficiaries of the estate of Astley Saint Clair Hendricks (deceased)
- b). The land has been surveyed and each beneficiary has taken possession of land representing their share of the estate.
- c). There is a building on the Defendants section of the land which includes a jerk centre and a section in which he lives.
- d). Since 2001 the Claimant was his tenant on approximately ¼ acre of the said land.
- e). In 2004 the Claimant approached him to buy one acre of the land. He said,

“After the passage of hurricane Gilbert I requested some money from him intending same to be advance on rental of premises. The claimant however insisted that this sum should go towards purchasing the said land and he prepared petty cash vouchers stating same which I signed.”
- f). He states that he eventually agreed to accept a price of US\$60,000 “but only on condition” that US \$45,000 was paid on signing of the agreement for sale, after which he would be put in possession and the balance paid on the production of the title.
- g). He stated that he informed the claimant that he would be unable to provide him with a Certificate of Title.

h). On the 4th December 2004 the Claimant approached him and offered to pay US \$10,000 towards the purchase of the land.

i). The Defendant says,

"I accepted the said sum from him and he brought me a receipt which I signed, which receipt states that the payment was subject to an agreement for sale being signed and returned to the purchaser within three (3) weeks."

j). The Claimant's attorney at law would prepare the agreement for sale and he received a draft. The draft was prepared by Lloyd Stanbury & Co.

k). After reading the draft he realised that it did not conform with the discussion he had with the Claimant. He placed question marks beside the terms he did not agree and handed it to the Claimant.

i). He said that on his way to the airport he received a package from the Claimant. On reaching home (in the United States) he opened the package and noted that it had a faxed copy of a Fax sheet from Stanbury and Company and a copy of the agreement he had marked.

j) He stated that on 'several' occasions he told the Claimant that the agreement was unsatisfactory. His concerns about the agreement were -

- i) The agreement had 3 names as vendors
- ii) The agreement said title was to be provided in 3 months.
- iii) The agreement said one acre more or less.
- iv) It provided for possession on payment of US \$30,000.
- v) It provided for initial payments of US \$15,000.

- vi) It provided for deposit to be paid by an attorney not yet appointed who would stamp agreement.
 - m) The Claimant started raising issues having to do with availability of title. He said the Claimant was unwilling to pay agreed sums unless title was given immediately. All sums paid "except the US\$10,000 were "taken back" by the Claimant on the 9th December 2006 as they were applied towards rental owed.
 - n). A Final draft of the agreement for sale was never presented for signing and no other agreement was ever presented. There is no signed document in existence.
 - o) The Defendant states that he is ill having had a stroke in 2010. While in the United States receiving treatment he understood the Claimant took possession of a section of the land and placed a gate and lock on it.
 - p) He states that he sued the Claimant in the Westmoreland Resident Magistrate court and obtained several injunctions which the Claimant ignored.
 - q) He had been threatened and assaulted by persons connected to the Claimant which led to charges before the RM Courts.
 - r) No subdivision approval has been granted in respect of the land.
 - s) He has offered to repay to the Claimant the money paid to him. The sums paid on the 27th April 2009 had nothing to do with the sale but was a loan from the Claimant.
 - t). He denied informing the Claimant that the title was at a final stage of splintering. He denied blaming the titles office for any delay.
- [23] When cross examined the Defendant stated he was a retired musician and band leader. His business activities included operating a recording studio and

orchestra in New York since 1963 but he still has a Jamaican passport. He is not an American citizen.

- [24] The witness said when he first leased the property to the claimant it was a cow pasture. The entire property was approximately 142 acres. He owned '40 something' acres of it. The following exchange occurred,

"Q. Did you agree to sell him for \$60,000
A. Yes
Q. Did you accept a deposit from him
A. I should have been
Q. you signed a receipt for US \$10,000
A. Yes
Q. Witness shown Exhibit 1 (b). Is that your signature
A. Yes
Q. What is date
A. 4th December 2004"

- [25] The witness admitted receiving an agreement for sale from Mr. Allen. He said Exhibit 3 was the original he received from Mr. Allen. The envelope in which it is contained is addressed to Mr. Brooks. He says he sent him back the same copy he had corrected.

- [26] He admitted the document stated the correct price of US \$60,000. He admitted receiving several payments including Exhibit 1 (d) a payment of J \$45,000.00 as part deposit on land on 27 January 2007. He had not returned the deposit of US \$10,000.00. He was asked.

"Q. Did you tell Mr Brooks the sale was proceeding?
A. I told him the subdivision was proceeding."

[27] At the close of cross examination there was no re examination. His answer to the questions from the court went as follows:

- “Q. Why tell him [the Claimant] you were awaiting subdivision approval?
- A. Because we had to probate and the vesting. Because attorney said when get subdivision we get splinter titles and so we could transfer to whoever buying the lots.
- J. Mr. Brown was the lawyer applying for subdivision
- A. No
- J: Which lawyer was applying?
- A. Freddie Hamaty”

[28] At the close of the Defendant’s case the parties were directed to file and exchange written submissions on or before the 5th March 2013. The matter was adjourned for oral submissions in which each would be allowed to speak to the others written submissions. These submissions were eventually heard on the 5th April 2013.

[29] The parties will forgive me for not reproducing in detail the submissions made. I have read them and have also revisited my note of the oral submissions. Counsel for the Defendant placed emphasis on the fact that his client had not signed and returned the contract prepared by the lawyer. He submitted that the reference on the receipt dated 4th December 2004 to the payment being “subject to the owners/vendors executing and returning to the buyer Cosmo Brooks, a copy of the Agreement for Sale within 3 weeks of the date hereof.....”, demonstrated there was no contract until one was signed.

[30] With respect I do not accept these submissions of the Defendant’s Counsel. The receipt dated the 4th December 2004 Exhibit 1 (page 5) is signed by the Defendant and reads,

"Received from Cosmo Brooks, businessman of 101 Montgomery Avenue, Kingston 10 the sum of Ten Thousand United States Dollars (US \$10,000.00) being payment on account of the purchase of all that parcel part of CAIRO PEN in the parish of Westmoreland containing by estimation one acre more or less and being part of the One Hundred and Fifteen acres of land comprised in Certificate of Title registered at Volume 615 Folio 381 of the Register Book of Titles. This payment is made subject to the Owners/Vendors executing and returning to the Buyer, Cosmo Brooks, a copy of the Agreement for Sale within three (3) weeks of the date hereof and also subject to the Owners/Vendors agreeing to a charge being placed on the title for the property to protect this deposit pending the execution of a formal agreement for sale between the parties."

- [31] That document constitutes a sufficient note or memorandum in writing to satisfy the statute of frauds. It is signed by the party against whom it is being enforced, and it has a description of the property being sold. Furthermore there has been part performance as the deposit was paid and the purchaser was already in possession of part of the land.
- [32] The Defendant contends that the condition precedent being execution and return of a signed agreement within 3 weeks was not complied with. However, the 3 weeks passed and neither party terminated the agreement. On the contrary the Defendant continued to collect further payments on account of the purchase price and continued to promise that the subdivision was in progress and the title being looked about. It is manifest that the Defendant had either waived that condition or the parties had impliedly agreed not to insist on it.
- [33] The minutes of the meeting dated 9th December 2006, do not show that the Claimant had given back the money as rent and therefore the agreement was at an end, as the Defendant contends. Rather those minutes underscore the fact that the parties still considered themselves bound by the agreement to sell land. I quote from the minutes Exhibit 1 page 23 (of the Agreed Bundle of Documents).

"Mr. Brooks raised the matter concerning the return of
The signed sales agreement and the processing of
papers (title) as per receipt of December 4th 2004.

Mr. Hendricks stated after a telephone conversation that the papers will be ready for March 2007.

All the requirements requested by the Commissioner of Lands have been provided and were waiting on Government approval for the preparation and printing of the title. Mr. Hendricks said that the information is not concrete but based on a conversation with someone that he knows.

Mr. Brooks asked Mr. Hendricks if it would be ok for him (Brooks) to liaise with Mr. Wright, who is Mr. Hendricks lawyer and was given the ok to do so.”

- [34] This Court therefore finds on a balance of probabilities that the parties at all material time entered into an agreement for the purchase and sale of the said one acre of land for a price of US\$60,000.00. The agreement is evidenced in writing by a receipt dated the 4th December 2004. The agreement and parol and other documentary evidence together satisfy the statutes of fraud **Elias v George Sahoy & Co. [1982] 3 ALL ER 808**. The agreement has not been terminated.
- [35] When therefore the Claimant took possession of the land he was exercising self help and making a claim of right. He has said and continues to maintain that he is ready willing and able to pay the balance due to the Defendant as soon as title is ready. Indeed his lawyers served a Time of the Essence Warning or Notice to Complete upon the Defendant. In this regard see letter dated 31st July 2009 (pages 26 – 29 Exhibit 1 agreed bundle of documents) and page 19 Exhibit 1 (Notice to Complete dated 8th April 2011).
- [36] By reason of the foregoing I make the following order and grant the following declarations:
 - a) It is hereby declared that there is in existence a valid and binding agreement for sale (hereinafter referred to as the sais contract) of all that parcel of land part of Cairo Penn in the parish of Westmoreland containing by estimation one acre more or less and being a part of the One Hundred and Fifteen acres of land comprised and described in an Indenture of Conveyance dated the 14th day of May 1946 and recorded at Liber New series 615 Folio 381, (hereinafter

referred to as the said land) for a consideration of US \$60,000.00.

- b) Specific Performance of the said contract is hereby ordered.
- c) The Registrar of the Supreme Court is hereby directed to take an account between the parties and to certify the balance due and owing from the Claimant to the Defendant in respect of the said contract when regard is had to interest, rent, taxes, stamp duties and all other relevant outgoings and costs related to the sale of the said land.
- d) Upon the balance due being certified as aforesaid the Claimant shall pay said amount to the attorneys at law representing the Defendant upon their undertaking to deliver to the Claimant or his attorney at law a registrable transfer or Title registered in the name of the Claimant or his nominee. In the event the Defendant's attorneys are unwilling or unable to give the undertaking the balance certified as due shall be paid into Court by the Claimant and a Notice of Payment into Court served on the Defendant or his attorneys at law.
- e) The Registrar of the Supreme Court is authorized to execute all relevant documents and in particular such applications, instruments of Transfer or other documentation necessary to perform the said contract should the Defendant refuse and/or fail to execute the said documentation.
- f) Costs of the sale agreement to be borne equally between the parties.
- g) Upon the balance certified being paid in accordance with paragraph (d) and until and unless this Order for specific performance is complied with the Defendant is declared to hold by way of a constructive trust on behalf of the Claimant a legal interest in the said land to which the Claimant is beneficially entitled.
- h) The Defendant is restrained by injunction from transferring, dealing and/or otherwise treating with the said 1 acre of land save only as may be necessary to

give effect to the Order and Judgment of this Court, or until further order.

- i) There is liberty to either party to apply generally to this court.
- j) Costs of the claim to the Claimant to be taxed if not agreed.
- k) The Defendant's Counterclaim is dismissed with costs to the Claimant to be taxed if not agreed.

[37] I therefore give judgment accordingly.

.....
**David Batts Q.C.
Puisne Judge**