[2020] JMSC Civ 184

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2018HCCV04901

BETWEEN	**W G NORTHOVER & ASSOCIATES LTD**	**1ST CLAIMANT**
AND	**BENKLEY NORTHOVER (Executor of estate Winston Northover)**	**2ND CLAIMANT**
AND	**ASTORIA DEVELOPMENT (JAMAICA) LIMITED**	**DEFENDANT**

IN CHAMBERS

Mr Glenroy Mellish for the Claimants

Mr Keith Brooks for the Defendant

Heard: January 23 and 30, February 13 and October 28, 2020.

Sale of land – No formal written agreement – Whether contract concluded – Purchaser serving notice making time of the essence – Specific Performance – Claim for Adverse Possession

LINDO, J

The Parties

[1] The First Claimant, W. G. Northover & Associates Limited (WGN Ltd.) is a limited liability company incorporated under the laws of Jamaica and a building contractor registered with the National Contracts Commission. Winston G. Northover, (WGN) now deceased, was the majority shareholder and Chief Executive Officer. Mr Eric Northover is the current Managing Director. The

Second Claimant, Benkley Northover, is suing in his capacity as the executor of the estate of Winston G. Northover, deceased.

[2] The Defendant, Astoria Development (Jamaica) Limited, (Astoria) is also a limited liability company and it has offices at 19 Red Hills Road, in the parish of Saint Andrew. Mr Leslie Mae, a Commissioned Land Surveyor is the Managing Director.

Background to Claim

[3] The genesis of the dispute between the parties was discussions between WGN Ltd. and Astoria in relation to the sale of Lots 9 and 10 Stanmore Heights, and the construction of roadways and for water supply. This was reduced in writing in Astoria's letter of January 22, 1998, to WGN Ltd., to the attention of WGN, which was signed by Leslie Mae on behalf of Astoria and Winston Northover on behalf of WGN Ltd. The letter states, among other things, that payment of the purchase price for the lots was to be made by WGN Ltd., by way of set off against certificates for payment for work completed. These were to be approved by B.G. W. Cawston and Partners or such other Quantity Surveyors as agreed by the parties. Possession of Lot 10 was to be given on the signing of sale agreements and commencement of road works and possession of Lot 9 upon the completion of roadways and water supply as certified by the Quantity Surveyor.

[4] By a letter dated March 22, 2000, an amendment of the original agreement which was requested by WGN Ltd. was noted by Astoria, so that Lot 9 was to be given on the commencement of works and Lot 10 to be given on the completion of the works. In a further letter dated January 15, 2001, (noted to be from Leslie Mae & Associates) Astoria's managing director indicated, among other things, that the purchase price of the lots is $3,200,000.00 and a balance of $224,218.83 was outstanding. The letter commences as follows: *"Further to our meeting of January 11, I now set out the final accounts. Kindly peruse the figures and submit any related claim you may have that is not accounted for..."*

[5] No formal written agreements for the sale or the transfer of the lots appear to have been prepared and or executed by the parties. The two lots were registered at Volume 1339 Folio 281 and Volume 1339 Folio 282, respectively, of the Register Book of Titles, to Astoria on February 22, 2002. Lot 9 was transferred to WGN on January 27, 2003 but there has been no transfer of Lot 10, although WGN Ltd was put in possession of that lot.

[6] Mr Winston G Northover died on April 28, 2012 and on May 16, 2013, a grant of probate in his estate was made to Benkley William Northover.

[7] By letter dated September 4, 2013, attorneys-at-law expressed the desire of the Claimants to complete the transaction relating to the sale and transfer of Lot 10. Eric Northover then had discussions with Mr Mae about the completion of the sale and by letter dated October 17, 2013, from Astoria, (in which Eric Northover is referred to as Richard) and which is stated as "the final accounts" the item titled *"Add agreed adjustment (50%) for Owner's input*", which was contained in the letter of January 15, 2001, was stated. It showed an amount of $342,500.00 for which WGN had been credited in the letter dated January 15, 2001, now listed as being due, and *"the balance outstanding as at January 15, 2001*" as *"$909,218.83*"

[8] On May 28, 2014, the Claimants' then attorneys wrote to Astoria's attorney with reference to the said sale and transfer of Lot 10 and the statement of account. In response, Astoria's attorney, on August 29, 2014, stated, among other things, that, " ... *the said statement cannot, therefore be re-addressed to the Executors of the estate of WG Northover as Astoria ... had no dealings with the estate of WG Northover, and cannot therefore, properly look to that estate for payment, or other compensation relating to this matter..."*

[9] In June 2016, Eric Northover, as beneficiary of the estate of WGN, lodged Caveat No 2009129 against the certificate of title for Lot 10, and on July 25, 2016, the Claimants' attorneys wrote to Astoria's attorneys expressing that they

were anxious to complete the transaction and querying what the sum of $342,500.00 was to compensate for.

[10] There appears to be no further written correspondence between the parties until a letter dated March 21, 2018, from the Claimants' attorneys, was sent to Astoria, with a Notice making time of the essence and indicating that the Claimants were ready, willing and able to complete the agreement, including 'payment of the outstanding balance of $224,218.83'. There was no response from Astoria in relation to the notice and the Claimants have remained in possession and occupation of Lot 10.

The Claim

[11] By Fixed Date Claim Form (FDCF) filed on December 12, 2018, WGN Ltd., and Benkley Northover, the executor of the estate of WGN, deceased, are seeking the following reliefs:

> "*An order for (a) specific performance of the contract for sale of Lot 10 being all that parcel of land shown on the approved subdivision plan of Stanmore Heights prepared by Leslie Mae, Commissioned Land Surveyor, being registered at Volume 1339 Folio 282 of the Register Book of Titles (b) declaration that mortgage no. 2106206 was unlawfully lodged and an order to the Registrar of Titles to discharge same.*
>
> *A declaration that the interest of WG Northover was held on trust for W.G. Northover & Associates Limited which paid the purchase price.*
>
> *In the alternative, a declaration that the Claimants have for a period in excess of twelve years been in open and undisturbed possession of all that parcel of land described as Lot 10 on the approved subdivision plan of Stanmore Heights prepared by Leslie Mae, Commissioned Land Surveyor, Lot 10 being registered at Volume 1339 Folio 282 of the Register Book of Titles AND that the title to the said land has been extinguished pursuant to Section 30 of the Limitation of Actions Act.*
>
> *An order directing the Registrar of Titles to cancel Certificate of Title registered at Volume 1339 Folio 282 of the Register Book*

of Titles and issue a new certificate of title in the name W.G. Northover & Associates Limited for all the lands now contained in the cancelled certificate.

Interest

Cost

Such other orders as the court deems fit and just".

[12] The FDCF is supported by the Affidavit of Eric Northover, to which is exhibited the grant of probate in the estate of WGN, copy of the title to lot 10 and copies of correspondence between WGN Ltd and Astoria, as well as the correspondence between attorneys at law representing the parties.

[13] The evidence contained in the affidavit of Eric Northover, together with the attached exhibits, form part of the background to the claim and some of the matters that are not in dispute and will therefore not be restated.

[14] Eric Northover's evidence also, is that the essential terms of an agreement for the purchase of Lots 9 and 10 from Astoria were set out in the letter dated January 22, 1998, and 'an agreement to that effect was signed'. He adds that the Claimants have remained in possession of Lot 10 and that he had discussions with Mr Mae and despite efforts to have Astoria complete the contract for the sale of Lot 10, it has failed to do so.

The Response to the Claim

[15] On December 28, 1018, Astoria filed an Acknowledgement of Service and on January 28, 2019, filed an Affidavit in Response by Leslie Mae. Exhibited to the affidavit are copies of the letter dated January 22, 1998, the undated letter from WGN Ltd., letter dated March 22, 2000, letter dated September 4, 2013, letter dated July 25, 2016, copy of the Affidavit of Eric Northover which was lodged at the Office of Titles and copy of the Notice of Registration of Titles sent to Eric Northover.

[16] Mr Mae denies that Astoria signed any agreement with WGN Ltd., and indicates that he signed the letter dated January 22, 1998, confirming discussions he had in relation to the purchase of the two lots. He says that possession of Lot 10 was to be given on the signing of the sale agreement, WGN Ltd requested an amendment so that WGN would get immediate possession of Lot 9 instead, and the amendment was done. He adds that WGN never took possession of Lot 10 "*except with the permission and authority of the Defendant company."*

[17] He states that neither possession nor transfer of Lot 10 was made to WGN, 'in his own right', because the conditions agreed for such possession or transfer were never satisfied by WGN Ltd. as WGN Ltd. never completed the construction of the roadways and water supply. He indicates that acting on behalf of Astoria, he had to make other arrangements with a different crew of workers for the completion of the works.

[18] Mr Mae also states that in the letter dated January 15, 2001, he had claimed, in error, $224,218.83 as a result of crediting to WGN Ltd. $342,500.00, which should have been credited to Astoria for its input of works and materials. He says on October 17, 2013, he sent a letter to WGN Ltd., incorrectly addressed to Richard Northover, in which the error in the letter of January 2001 was corrected, thereby showing a balance of $909,218.83 due to Astoria.

[19] He says WGN was allowed to place a shipping container on the land, which was used to store materials and tools and provide shelter for Gifford Phillip, who was paid as a watchman by Astoria for several years, until he was dismissed. Mr Mae contends that Astoria had continuously been in possession of Lot 10, "*either by itself or by its watchman/caretaker".*

The Submissions

[20] Both Counsel provided written submissions which greatly assisted the court in coming to a determination. I will not restate them but will make reference to them as I see it necessary to indicate my reasoning and conclusions.

[21] It bears noting at this point however, that Counsel for the Defendant raised issues of whether the 2nd Defendant was a proper party to the claim and whether a party who is in breach of an obligation he has in an agreement, can get an order for specific performance of an obligation that the other party has to him in that agreement. Counsel also indicated that the FDCF did not state the grounds on which the claim was being made and that the 1st Claimant never mentioned anything in its affidavit that it had completed the roadways and water supply, a pleading which he stated "is considered a vital foundation for the type of equitable relief claimed".

The Issues

[22] The court has to determine whether there was a concluded agreement for the sale and purchase of Lot 10, and whether the Claimants are entitled to specific performance of the agreement.

[23] The court also has to consider and determine whether the 2nd Claimant is a proper party to the claim, including whether the interest of Winston Northover, deceased, was held on trust for WGN Ltd. which paid the purchase price; and whether the Claimants have satisfied the legal requirements to acquire Lot 10 by adverse possession.

The Trial

[24] The matter came on for hearing on January 23, 2020. The claim for a declaration that mortgage #2106206 was unlawfully lodged was abandoned and the Claimants sought orders for the discharge of the mortgage in exchange for the balance adjudged to be due, the delivery of the certificate of title within 14 days of the order and for their attorneys to have carriage of sale pursuant to their claim for "such other orders as the court deems fit and just".

Claimants' Evidence

[25] Mr Eric Northover was the sole witness on behalf of the Claimants and the evidence contained in his affidavit in support of the FDCF stood as his evidence in chief. Exhibits EN1 – EN8 attached to the affidavit were also admitted in evidence.

[26] On cross examination, he said he became managing director of WGN Ltd. about a year after his father passed away and that he knew Mr Mae as a Commissioned Land Surveyor and a client of WGN Ltd. He admitted that he was told about the letter of January 22, 1998, which he said is clear as to the terms of the agreement and he indicated that construction work was done and roadways and water supply put in and that he did not know if an agreement for sale was prepared.

Defendant's Evidence

[27] The evidence contained in the Affidavit of Leslie Mae in response to the Affidavit in Support of the FDCF stood as the evidence in chief of the Defendant and the documents exhibited to his affidavit, referred to in paragraph [15] above, were also admitted in evidence.

[28] When cross examined, Mr Mae said there were no executed agreements but that the letter dated January 22, 1998, accurately described what Mr Northover's company was to do for Astoria and the way he would be paid. He said the letter dated January 15, 2001 was not a final statement of account, but a final account "up to January 2001" and identified the letter dated October 17, 2013 (incorrectly addressed to Richard Northover) as a revised statement of account being given twelve years later. He admitted that WGN Ltd. did infrastructural work at Stanmore and he said the two letters describe the work.

[29] Mr Mae denied that WGN Ltd. did roadworks and water works in accordance with the agreement, but admitted that work was done to the value of $2.7m and that

WGN Ltd did not complete the infrastructure contract so WGN could not get Lot 10, although he was to eventually own the lot.

[30] He agreed that the price for the lots was $1.6m each, and said he could not recall the price of the contract, but that it was more than $3.2m. He disagreed that the amount stated in the letter of January 15, 2001 is the balance to be paid, but agreed that that was what the letter stated. He indicated that none of the figures stated are the amounts and agreed that in the said letter he was claiming to collect money from other projects.

[31] He said he could not recall meeting with WGN himself, and then said he could not recall if when he met WGN in January 2001, he was still doing work. He also said that he recalls that work would have stopped sometime in 1999 and admitted that he was sending an account in 2013 and was making a claim for the balance as at January 15, 2001. He agreed that the letter does not mention cancellation of the agreement and it said nothing about having to complete work at Stanmore. He denied having, by 2013, given up on getting paid for work done to set off price of the lots.

[32] Mr Mae agreed that apart from the letters of 2001 and 2013, no other statements of account were rendered. He said he did not recall the letter dated July 25, 2016 addressed to his attorney at law (EN7) being brought to his attention, but recalled getting a letter with notice making time of the essence and did not recall if he responded.

[33] He denied that the first time Eric Northover was hearing that infrastructure work had to be finished before the Claimants can get Lot 10, was in his affidavit in response to the claim. He also denied that he was willing to collect the balance from other monies paid by Mr W. Northover, but admitted that that is what was stated in his letter dated January 15, 2001.

The Law and Application

Whether there was a concluded contract between the parties and an enforceable agreement for the sale and purchase of Lot 10

[34] The Claimants have the burden of proving that an agreement for the sale and purchase of Lot 10 existed, and that it can be specifically enforced.

[35] A contract for the sale or transfer or other disposition of land or an interest in land must either be in writing or evidenced by sufficient note or memorandum in writing. It must identify the parties, the capacity in which they contract, speak to the material terms of the contract and be signed by the party against whom it is being used. (See **the Statute of Frauds, 1677.** See also **Treitel The Law of Contract, 12th Ed. Para. 5-015 – 5-019).** The material terms include a description of the property, the agreed price, date of completion, if fixed, and the manner in which the purchase price is to be paid.

[36] If the requirements of the statute are not present in the document, it cannot be enforced unless the claimant can show that there is a sufficient act of part performance. (See **Maddison v Alderson** (1883) 8 A.C. 467) The act of part performance must point to and be referable to the existence of some contract such as that which is being sought to be enforced. (See **Steadman v Steadman** [1976] AC 536)

[37] In determining whether a contract exists in the instant case, I have considered whether there is evidence showing that the parties had agreed on the essential terms of the agreement and whether these terms were clear and unambiguous.

[38] There is not much dispute as it relates to the material facts however, as the dealings between WGN Ltd., and Astoria, before the death of WGN, and discussions between Eric Northover and Mr Mae subsequently, are substantially evidenced by the documents admitted in evidence which stand as undisputed. The several letters, taken together, in my view, support a finding that there was a concluded contract for the sale and purchase of the two lots.

[39] The parties to the agreement, Astoria and WGN, have been identified and named, the subject matter, Lots 9 and 10, adequately described, and the price for which the lots were being sold, is stated as $3.2m.

[40] Although no specific completion date was stated in any of the letters, the court may imply that completion should be within a reasonable time, as the evidence is that one lot would be given on the signing of the agreement and commencement of work and the other on the completion of the infrastructure work. The documents therefore show the terms on which the parties entered into the contract for the sale and purchase of Lots 9 and 10 and there is evidence that aspects of the agreement have been performed and there has been completion in relation to Lot 9.

[41] The letters dated March 22, 2000, and the undated letter (said to be received by Astoria on March 18, 2000) referred to in it, show that the parties had certain agreed terms which were subsequently amended. I note also that in relation to meetings and or discussions between Astoria and WGN on behalf of WGN Ltd., it is Astoria which put the details in writing, in the form of letters, and that the letter dated January 22, 1998 was signed by Leslie Mae, as managing director of Astoria, and WGN, on behalf of WGN Ltd. It is therefore not difficult to determine that the terms of the agreement are in fact set out in the initial letter of January 22, 1998 and the further letter showing the amendment.

[42] I accept as true the evidence of Eric Northover that the Claimants have been in possession of Lot 9 since 2001. The parties have taken steps in furtherance of the agreement referred to in the letter dated January 22, 1998, so that in addition to the transfer of Lot 9 to WGN, in 2003, the consideration for which was stated to be $1.6m, the Claimants were also put in possession of Lot 10 by the Defendant.

[43] The correspondence between the parties setting out essential details of the agreement between the parties, in particular the letters dated January 22, 1998,

and the undated letter, and the amendment of the terms contained in letter dated March 22, 2000, in my view would together constitute 'a memorandum in writing signed by the person to be charged', and as such satisfies the requirements of **The Statute of Frauds.**

[44] I find also that the Claimants' act of placing a shipping container on the property in which they stored their material and tools, and the 1st Claimant's act of carrying out infrastructural work, as noted in the letter dated January 15, 2001, constitute part performance which also would satisfy the requirements of the **Statute of Frauds**.

[45] I am therefore driven to the conclusion that the Claimants have established on a balance of probabilities that there is a valid and enforceable contract between WGN Ltd and Astoria for the purchase of Lot 10. The conduct of the parties, and the correspondence between them, the fact that Lot 9 has already been transferred to WGN, and the discussions had between Eric Northover and Mr Mae after the death of WGN, point to a finding that there was a concluded contract to which the parties are legally bound. I also find that Astoria accepted that there was still a subsisting agreement even after the letter dated August 2014 from its attorney, and there is no evidence to refute the inference to be drawn in the circumstances, that the agreement for the sale of lot 10 was still subsisting.

[46] The court therefore finds favour with the submission of Counsel for the Claimants that there is a contract for the sale of Lot 10, which the court can infer was priced at $1,600,000.00, and the contract is still in force.

Whether the 2nd Claimant is a proper party to the claim and whether the interest of WGN was held on trust for WGN Ltd which paid the purchase price

[47] In **Lysaght v Edwards** (1876) 2 Ch.D 499 at 506 Jessel MR states:

> *"…The moment you have a valid contract for sale the vendor becomes in equity a trustee for the purchaser of the estate sold and the beneficial ownership passes to the purchaser…"*

[48] In relation to the claim for a declaration that the interest of WGN was held on trust for WGN & Associates Ltd., Counsel for the Claimants submitted that the beneficial interest in the property passed to WGN before he died and his interest is transmitted to his personal representative to whom he devised it by his will. Additionally, Mr Mellish, stated that **Section 2 of the Law Reform (Miscellaneous Provisions) Act** is conclusive that the right to demand performance of the contract that WGN had under the contract, survives his death and can be pursued by his personal representative. He also indicated that the issue of whether the land was held on trust is a matter as between the Claimants and that it is a claim for a resulting trust since WGN Ltd paid the purchase price for WGN.

[49] Counsel for the Defendant, in skeleton submissions filed on July 18, 2019, stated that Benkley Northover, as executor of the estate of WGN's estate, not having been a party to the agreement made between WGN Ltd., and Astoria, had no rights sufficient to support a claim for specific performance of the agreement in relation to sale of Lot 10 to him. Mr Brooks also submitted that even if the 2nd Claimant had legal rights under the agreement, since the conditions that had been agreed had not been satisfied by the 1st Claimant company, and the agreement would therefore have been breached, the 2nd Claimant could have no claim for the equitable relief of specific performance.

[50] WGN in my view had a valid contract for sale in respect of Lot 10. The evidence shows that the acts to be performed which are the infrastructure works by WGN Ltd. have been certified. Relying on principles of equity, the fact that there was no transfer to WGN prior to his death should not defeat the clear intention of the parties, which is, WGN to purchase and Astoria to sell, the property contracted for, Lot 10. Astoria therefore cannot disregard the equitable interest in Lot 10 created by and subsisting under the agreement.

[51] There is no evidence that WGN, in his personal capacity, gave any consideration in relation to the agreement for the purchase of any of the properties. The arrangement was for the price of the properties to be paid by a set-off for work done by WGN Ltd. and as such a trust would be presumed in favour of WGN Ltd. WGN would therefore be the trustee for the properties to be purchased and as such, WGN would have had standing to bring a claim for specific performance of the agreement. WGN having died, the executor of his estate can maintain a cause of action that was vested in him (See **The Law Reform (Miscellaneous Provisions) Act, Sec 2.)**

[52] I bear in mind that Benkley Northover was not a party to any discussions relating to the sale and purchase of the two lots and that the general rule is that a person who is not a party receives no right and incurs no obligation under a contract. In contracts for sale of land, however, this court has found in the instant case that there is such a contract, the basic rule is that the death of either or both parties before the completion does not avoid the contract. It remains enforceable by and against the personal representative of the deceased.

[53] The right to demand performance of the agreement between the parties, which WGN had, survived his death, and can be pursued by his personal representative. Benkley Northover obtained a grant of probate in WGN's estate. I therefore find that Benkley Northover in his capacity as executor of the estate of Winston G Northover, deceased, is a proper party to the proceedings.

Whether the Claimants are entitled to an order for specific performance

[54] Specific performance is an equitable remedy granted at the discretion of the court to compel the party in default to perform and complete the contract. In exercising this discretion, the court takes into account factors including delay on the part of a party to the contract, delay in seeking the remedy and whether the defendant is prejudiced thereby. (See **Lazard Bros and Company Limited v Fairfield Properties Co. (Mayfair) Ltd**. (1977) 121 Sol. Jo. 793). The court also

has to consider whether the person seeking performance is prepared to perform his side of the contract, (see **Chappel v Times Newspapers Ltd** [1975] 1 WLR 482); whether the person against whom the remedy is sought would suffer hardship in performing (see **Patel v Ali** [1984] 1 All ER 78); the difference between the benefit the order would give to one party and the cost of performance to the other, and whether third party rights are affected.

[55] The basis of the Claimants' claim is that there is still a contract in force as there has been no lawful termination, but that the Defendant has merely refused to complete, and they are now in a position to pay the balance of the purchase price.

[56] Astoria in resisting the claim, submitted that a claimant, who seeks to enforce a contract by such an order, must show that he has performed or has been ready and willing to perform all the terms and conditions to be performed by him under the agreement. Reliance was placed on the Privy Council case of **Australian Hardwoods Pty Limited v Commissioner for Railways** [1961] 1 All ER 737 in which there was a claim for specific performance and for other reliefs arising from a written agreement. Lord Radcliffe said, *inter alia*, that "*A plaintiff who asks the court to enforce by mandatory order in his favour some stipulation in an agreement which itself consists of interdependent undertakings between the plaintiff and the defendant cannot succeed in obtaining such relief if he is at the time in breach of his own obligations*" The court noted also that, "*where the agreement is one which involves continuing or future acts to be performed by the Plaintiff, he must fail unless he shows that he is ready and willing on his part to carry out these obligations ...*" The court found that the appellant was not entitled to specific performance as it failed to show it was ready and willing to perform its share of the agreement.

[57] Additionally, Counsel, Mr Brooks, indicated that the Claimants in the FDCF did not state the grounds on which the claim for specific performance was being made as required by the **Civil Procedure Rules, 2002** (as amended) (CPR) and

that the affidavit of Eric Northover does not address the matter of non-performance by WGN Ltd. of its obligations under the agreement and the court would have no legal basis on which to grant specific performance in those circumstances. He also submitted that the stated conditions were not satisfied and WGN Ltd. was obliged to prove it had fully satisfied the conditions stated in the letter of agreement.

[58] **Rule 8 of the CPR** requires that where a claimant uses a fixed date claim form, the claim form must state "...the remedy the claimant is seeking and the legal basis for the claim to that remedy; ..." The FDCF filed by the Claimants in this case set out the remedies sought but failed to state the legal basis for the claim to the remedies. The FDCF was filed on December 12, 2018 and having been served on the Defendant, an acknowledgement of service was filed on December 28, 2018 and an affidavit in response filed on January 28, 2019, without the point being taken as to the form of the FDCF. The matter also came on for a first hearing on February 5, 2019 when it was set for trial on July 25, 2019 and adjourned and finally heard on January 23, 2020. The FDCF although generally in substantial non-compliance with Rule 8.8 of the CPR, is grounded on the affidavit of Eric Northover, the managing director of the 1st Claimant with the attached exhibits which collectively constitute the particulars of the claim being made.

[59] I therefore do not agree that the Claimants "never mentioned anything whatsoever in [the] affidavit in support to ground application for an order for specific performance or that could form the basis on which this Honourable Court could grant such an order". Eric Northover, in his affidavit, speaks specifically to initial agreement in the letter of January 1998, the fact of having discussions with Mr Mae and the failure of Astoria to complete the contract despite those discussions and efforts. I also bear in mind that there is evidence in the form of the letters attached to the affidavit which I accept as showing, among other things, that the completion of roadways and water supply were certified in

accordance with the agreement. Additionally, I do not find on the evidence that the Claimants have breached any of the obligations set out in the agreement.

[60] No prejudice has been claimed to have been suffered by the Defendant so far as the Claimants failed to set out the legal basis, the affidavit in support having stated the facts to support the claim and no application was made prior to the commencement of the trial for the claim to be struck out for non-compliance with the CPR. The court will therefore, in its case management powers "put matters right" by allowing the FDCF to stand.

[61] I must point out at this juncture that I note that the thrust of the cross examination of Eric Northover surrounded whether he had documentary evidence to show that WGN Ltd had put in roads and water. Counsel expressed the view that Eric Northover appeared "not wishing to commit himself or to be 'pinned down'". I however, found Eric Northover to be quite forthright, even admitting matters which would not assist the Claimants' case such as the fact that he does not even know if any agreement was signed, even after having so stated in his affidavit, and indicating that he was not sure he was in a position to bring documents to court to prove that water supply was done by WGN Ltd. and that in relation to documents showing that roadways were put in, he would have to look for them.

[62] Evidence elicited from Eric Northover, on cross examination, which I accept as true, is that WGN Ltd completed the construction of roadways and water supply and that the two roads in the subdivision were constructed and asphalted. This, together with the fact of the work having been stated as verified in correspondence from Astoria, also leads to the conclusion that the Claimants have substantially carried out their part of the agreement.

[63] Even though a date for completion is not provided for in an agreement, the law implies an obligation to perform within a reasonable time, having regard to all the circumstances of the case. There was no specific completion date set out in the

letters forming the agreement which means that time was not originally made of the essence of the agreement. However, in a case where there has been an unreasonably long delay, the party aggrieved may be justified in treating the default as a repudiation. (See **Cole v Rose** [1978] 3 All ER 1121).

[64] It is also settled that a party may after unreasonable delay by the other party give reasonable notice to him to complete within a specified time, provided the party serving the notice had carried out his own obligation under the contract. (See **Smith v Hamilton** [1951] Ch. 174; see also **Ajit v Sammy** [1967] 1 AC 255). The authorities also indicate that for a notice to be valid it must be served and the party serving must be ready and willing to complete at the time they served the notice.

[65] The Claimants have sought to make time of the essence in seeking to compel Astoria to complete the contract by serving notice on it. In the letter dated March 21, 2018, they enclosed a notice and indicated that they were ready and able to complete and to pay the outstanding balance within fourteen days of the date of the notice. When the notice was served on Astoria, the agreement would have been in existence from 1998 and the Claimants appear to have completed their part of the agreement, which was to put in infrastructure works and water supply, at least by 2001.

[66] Astoria had sent what was said to be a final statement of accounts to the Claimants in January, 2001. This therefore appears to have been delay on the part of both parties in completing the agreement. No reasons for any delay by either party have been proffered, but I bear in mind that there was no fixed date for completion stated in the agreement and that WGN died in 2012.

[67] The Claimants by letters dated September 4, 2013, May 28, 2014, July 25, 2016 and March 21, 2018 showed their intention to complete the agreement for the sale of Lot 10. The letter dated August 29, 2014, from the Astoria's attorney

shows that there was still a contract in force and that Astoria could not properly look to the estate of WGN “for payment, or other compensation...”.

[68] I have found on the evidence that there was no indication that there was anything further required of the Claimants, the “agreed claim” having been “verified by B.G.W. Cawston and Partners”. I therefore find it to be reasonable for the Claimants to have served the Defendant with the notice so as to prevent any further delay in completing the agreement.

[69] The time noted for completion in the notice making time of the essence was fourteen days, and in determining the reasonableness of the time, I have considered what remained to be done at the date of the notice and other circumstances, including the previous delay of the vendor and the attitude of the purchaser in relation to the delay. (See: **Stickney v Keeble** [1915] AC 386). I note that it appears then, that all that was left to be addressed was the issue of whether there were any outstanding sums by the Claimants and for the Defendant to provide title to them for Lot 10.

[70] I bear in mind that it is not denied that it is the Claimants who had discussions with the Defendant in an effort to have the contract completed and that even after sending the letter of October 17, 2013, Astoria did nothing to complete and neither was there any indication by Astoria that WGN Ltd. had not completed the infrastructure works and water supply.

[71] About twenty years elapsed from the date the first letter was signed by the parties setting out the agreement, to the time of the serving of the notice. The Claimants, by the letter dated September 4, 2013, did not simply express their desire to complete but also sought to query the sum of $342,500.00. Eric Northover had discussions with Mr Mae and it was subsequent to those discussions that the letter of October 17, 2013 was sent by Astoria. That letter, also said to be setting out final accounts, made no mention of any work to be completed by WGN Ltd. and neither was there any indication that in the

discussions between Eric Northover and Mr Mae, it was stated that work was to be completed.

[72] It was reasonable for the Claimants to have served notice on the Defendant on March 21, 2018 and the Defendant was required to act with alacrity thereafter. I therefore find in the circumstances that the fourteen days given for completion was reasonable. The notice indicated that the Claimants were ready, able and willing to complete. As at the date for performance, time was of the essence and it was completely ignored by the Defendant. The failure to complete by the Defendant therefore amounted to a breach which entitled the Claimants to apply to the court for remedies.

[73] Delay on the part of the Claimants, of itself, is no bar to an order of specific performance unless the Defendant has been prejudiced thereby (See **Lazard Bros and Company Limited v Fairfield Properties Co. (Mayfair) Ltd,** *supra*. Additionally, the learned authors of **Snell's Principles of Equity**, 28th Ed. at page 594, in relation to delay in enforcing a claim, states, *inter alia*, that:

> *"... where however the plaintiff has been let into possession under the contract and has obtained the equitable interest so that all he requires is a mere conveyance of the legal estate, even many year's delay in enforcing his claim, will not prejudice him ..."*

[74] It is the Defendant which raised the issue of delay as a bar to the Claimants' entitlement to specific performance and although the Defendant states that the Claimants delayed in completing the contract, there is no evidence of any such delay and neither is there any evidence that it did anything to seek to compel them to complete within any particular time or with reference to any delay.

[75] In the case of **Williams v Greatrex** [1956] 3 All ER 705, a case cited by Counsel for the Claimants, the court held the plaintiff to be entitled to specific performance notwithstanding a delay, as there was no specified time fixed for completion. The plaintiff was not barred from seeking the remedy by any undue delay as he had an equitable title by virtue of possession and he had not abandoned the contract

[76] There is no dispute that the Claimants are in possession and occupation of the lot and there is no evidence to show that they were asked to vacate it. Astoria also did not serve the Claimants with a notice making time of the essence. As purchasers in possession, I find that the Claimants have demonstrated that they have been willing, ready and able to complete the contract. They gave Astoria a valid notice making time of the essence after substantially performing conditions of the agreement, the precise terms which I find were waived on the amendment of the original conditions. The time for performance by Astoria as given in the notice had elapsed. The unreasonable delay by Astoria in my view is sufficient justification for the Claimants to accept that Astoria was just refusing to complete.

[77] Having been in possession of the property with permission from Astoria, I see nothing in the conduct of the Claimants which could render it inequitable for them to be granted specific performance. There was no evidence of delay on their part to bar them from the remedy and even if there was delay, Astoria could be said to have acquiesced in such delay as the evidence shows that no steps were taken by Astoria to complete or terminate the contract after what was described as final accounts, were submitted to the Claimants in 2001 and again in 2013.

[78] It was submitted by Mr Mellish on behalf of the Claimants that the learned authors of **Barnsley's Conveyancing Law and Practice**, 3rd Ed. at 226 - 230 indicate that specific performance is available even if the purchaser has to rely on part performance. He indicated that in the instant case, the court can infer the purchase price of Lot 10 to be $1.6m, and that even on Astoria's case, the amount left to be paid was not more than $703,968.83 as it is theoretically possible to add the $342,500.00, if sufficiently proved to the court, as adjustments to be made to the certificates which have already been set off against the sale price. He added that the unpaid sum of $205,250.00 which relates to work done on other sites cannot be the basis for resisting the claim for transfer of the property.

[79] Counsel also submitted that there is no evidence that completion of the works in the subdivision was a condition precedent to the completion of the contracts by questioning why it did not also apply in relation to Lot 9. While I do not agree with Counsel on this point, as the documentary evidence is clear, I agree with his expressed view that it would be hard to contest that the infrastructure works have been completed, as title for both lots have been issued by the Registrar of Titles and title to Lot 9 has been transferred to WGN.

[80] The letter dated January 22, 1998, states, *inter alia*:

> *"...terms and conditions of sale ... in the respective Agreements for Sale executed by both parties" and that "possession of Lot 10 will be given upon signing of the Sale Agreements by both parties and commencement of the road works. Possession of Lot 9 ... upon completion of the roadways and water supply as certified by the Quantity Surveyor"*

The letter which contains the amendment specifically states:

> *"Possession of Lot 9 will be given upon signing of the Sale Agreements by both parties and commencement of the road works. Possession of Lot 10 will be given up on completion of the roadways and water supply as certified by the Quantity Surveyor"*

[81] The court finds favour with the submissions of Counsel for Astoria that the letters, taken together specify the conditions or the circumstances in which Astoria was prepared to transfer Lot 10, and that it would be on the actual completion of the road works and water supply by the 1st Claimant, as certified by the Quantity Surveyor. However, in submitting that nowhere in the affidavit of Eric Northover is it alleged that the stated conditions were completely satisfied, Mr Brooks has failed to have regard to the fact that it is in the documentary evidence presented to the court from which the court has in fact found that the Claimants have substantially completed their part of the agreement. Additionally, evidence elicited from Eric Northover on cross examination is that the roadways were put in and asphalted and there is the evidence of roadways and water supply having been verified by the Quantity Surveyor, B.G.W Cawston. This has not been denied by Mr Mae.

[82] The parties having acted on the amendment to the initial agreement, it is reasonable to infer that Lot 9 was given upon the signing of a sale agreement by the parties and the commencement of road works by WGN Ltd. There is no evidence however, of any formal written document, referred to as a sale agreement, having been signed by the parties in respect of either lot, although there is evidence that the title for lot 9 was registered to WGN in 2003 and that the Claimants were put in possession of Lot 10.

[83] The Claimants have also shown that payments have been made towards the purchase of Lot 10 by way of the set-off arrangement and there have been the construction of roadways and the provision of water supply certified by the Quantity Surveyor. These acts, I find, also provide proof of the contract as alleged by them in respect of the sale of the two lots, one of which has already been transferred, and as such lead to a finding that the Claimants may also rely on the doctrine of part performance.

[84] I find that although Eric Northover was unable to speak from his own knowledge as to what obtained prior to the death of WGN, the documentary evidence presented in the case has substantially confirmed the Claimants' case. Where there are conflicts in the evidence as to issues of fact, I prefer and accept the evidence adduced by the Claimants' witness and as contained in the documents admitted in evidence, to that of the oral evidence of Mr Mae.

[85] Although Mr Mae, in cross examination, admitted that WGN Ltd carried out water and road works in Stanmore Heights, he said they stopped working in 1999. In his letter dated January 15, 2001 (EN4), it is stated that final accounts are set out and the item titled 'Agreed claim as verified by BGW Cawston & Partners' shows debit of $2,714,913.17. This, I understand to be the cost of the roadways and water supply completed by WGN Ltd. I note also that there is an amount stated for work done on Lot 7 and references to invoices in respect of other areas.

[86] In the letter dated October 17, 2013, which refers to "Revised Statement of Account", Astoria sets out the figures as stated in the January 15, 2001 letter, with the difference being that the sum of $342,500.00 was now claimed from the Claimants. This is again stated as 'final accounts'. It was originally stated that "*the costs of the works are set out in the priced Bills of Quantities ... with the proviso that any sum added to or deducted from the total being treated as a percentage adjustment on or off the whole of the prices in the bills of quantities...*"

[87] The court did not have the benefit of any 'Bills of Quantities', as referred to, but the fact that there was reference to sums added to or deducted from the total being treated as a percentage adjustment, "on or off the whole of the prices" in the initial letter of January 22, 1998, shows that it was in the contemplation of the parties of the likelihood of adjustments being made.

[88] I therefore find that the adjustment made and noted as "agreed" in the letter of January 15, 2001, was accepted by the parties as it is reasonable to assume that WGN would have perused the figures as requested. There is no evidence of any "related claim" being referred to subsequently, or to any query in relation to the information contained in that letter until July 2016, and neither is there any evidence presented to show that the sum of $342,500.00, stated ought not to be credited to WGN Ltd as originally stated, or that the sum noted for work done on Lot 7 ought to be applied towards the purchase price.

[89] I reject the evidence of Mr Mae that the roadways and water supply were not completed by WGN Ltd. The fact that he also said that he could not recall the value of the contract leads to a finding that he was not being sincere. I must point out also that I did not find the Claimants' inability to produce documents to show that the 1st Claimant had completed construction of road and water supply in the subdivision to be fatal to the claim as I found it to be substantially evidenced by the letters from Astoria referring to final accounts.

[90] I find on a balance of probabilities that the infrastructure works were in fact completed, as I accept that the letter dated January 15, 2001, and said to be setting out final accounts, was in fact final accounts which indicate the cost of work done as verified by the Quantity Surveyor in keeping with the agreement. The cost of the work as verified, however, did not amount to the purchase price, as agreed, and there is no evidence of any further agreement between the parties as to the course of action to be taken to complete the purchase of Lot 10.

[91] The letter of October 17, 2013 was said to be a "revised statement of account" and the evidence is that Eric Northover had discussions with Mr Mae after the death of WGN. Although there was correspondence between the then attorneys for the Claimants, and Astoria, including the letter dated May 28, 2014, there is no evidence as to when the attorneys on the record for the Claimants became involved in the matter but it was not until the letter of July 25, 2016, that there was any query in relation to the figure of $342,500.00 and this is some three years after the previous attorneys indicated the willingness of the executor of the estate of WGN to complete the sale and transfer of Lot 10.

[92] This court cannot accept the letter of October 2013, as correcting an error in the letter of 2001, it coming so many years later, being after the death of WGN and after Mr Mae had discussions with Eric Northover. I accept as true the evidence of Eric Northover that there was no explanation provided for the change and I reject as unreliable the evidence of Mr Mae that the sum was credited to WGN Ltd in error in the 2001 letter.

[93] The Claimants have shown that they have been and are prepared to do their part to complete the contract and there is no evidence to show that there would be any hardship in the Defendant completing the agreement or that performing the contract would be at any additional cost to either party save and except that the Claimants would be required to make good the full purchase price of the lot. The Claimants have also shown that they are prepared to pay whatever sum is found to be outstanding. Additionally, it has not been shown on the evidence that any

third party rights are affected except for the mortgagee now noted on the title for Lot 10, and there is no evidence that there would be any hardship in Astoria performing.

[94] I therefore find that the Claimants have proved their case on the preponderance of the evidence, and, for the reasons stated above, I am driven to the conclusion that they have established that there is an enforceable agreement between the 1st Claimant and Astoria for the purchase of lot 10 and that they are entitled to the relief of specific performance.

[95] Having come to the conclusion that the Claimants are entitled to specific performance of the agreement to purchase Lot 10, I will now address the issue raised by the Claimants' attorneys in relation to whether there was any agreement precluding payment by any means other than a set off of the value of infrastructure works in Stanmore Heights.

[96] The initial agreement in the letter of January 22, 1998 speaks specifically to how the purchase price was to be paid and also shows that provision was made for the rate at which payment for the roadways and water supply would be made if the contract was varied. There is nothing however, to suggest that this was the only way the purchase price for the lots could be paid. Invoices presented to the Claimants as referred to in the subsequent letters, show the value of the work that was done by WGN Ltd. and in the statements of accounts presented by Astoria, there are references to work done in developments other than Stanmore.

[97] The agreement contained in the letter dated January 22, 1998 does not specifically state where the infrastructure work was to be done. However, paragraph 2 states: "*W G Northover and Associates agrees to construct the Roadways and water supply in accordance with the specifications of the said subdivision plan"*. The subdivision plan referred to is "*the approved subdivision plan of Stanmore Heights...*". This was with reference to the description of Lots 9

and 10. It is therefore reasonable to conclude that WGN Ltd. agreed to carry out the infrastructure work in Stanmore Heights.

[98] In the letters dated January 15, 2001 and October 17, 2013, Astoria refer to sums in relation to infrastructure work, other than roadways and water supply, done on Lot 7, (assumed to be in Stanmore Heights) and for work done in Goldsmith Villas and Belvedere and Belvedere or Bellevue (as previously stated in the letter dated January 15, 2001). The set off arrangement in the agreement, as I understand it, was specifically concerning the construction of roadways and water supply in the Stanmore subdivision. I therefore find the cost of any work done apart from infrastructure works and water supply in the subdivision, and any work done outside of the Stanmore Heights subdivision, to be unrelated to the terms of the agreement.

[99] It follows, therefore, that the sums stated with reference to the invoices for the unrelated work, ought not to be applied in respect of the agreement. As stated earlier, I reject Mr Mae's story that WGN Ltd. did not complete the infrastructure work and he had to get other persons to carry out infrastructure work especially in view of the fact that there is no evidence to show that at any time between 1998 and up to the time of the death of WGN, or in 2013, when he had discussions with Eric Northover, did he indicate that there was work to be completed.

[100] Once the condition of completing the infrastructure works in the Stanmore subdivision was fulfilled, I believe it would be reasonable for the Claimants to pay any outstanding amount using other payment options in the situation where the cost of the works did not amount to the purchase price as agreed.

[101] I therefore find that the sum of $2,714,931.17 stated as "agreed claim as verified by B.G.W. Cawston & Partners" being the costs for the completion of the roadways and water supply, should be deducted from the total purchase price of $3,200,000.00. The sum of $342,500.00 should also be deducted from the

purchase price as this court does not find it proved on a balance of probabilities as an adjustment which is to be credited to Astoria.

[102] Additionally, the amount of $123,600.00 said to be an amount for work done on Lot 7, which has been assumed to be part of the Stanmore subdivision, ought not to be applied as falling under infrastructure work in the Stanmore subdivision as the set off arrangement contracted for in the agreement was for the construction of roadways and water supply, certificates for which would be approved by the Quantity Surveyor and such work would be unrelated to the terms of the agreement.

[103] The sums stated in the letter of January 15, 2001 as outstanding on the purchase price, as well as the letter of October 17, 2013 stated as the balance as at January 15, 2001, would therefore both be incorrect and there would be a balance of $142,568.83.

Whether the Claimants have satisfied the legal requirements to acquire the property by adverse possession

[104] The Claimants have claimed that, in the alternative, they are seeking a declaration that they have acquired Lot 10 by adverse possession.

[105] The limitation period for land claims in Jamaica is twelve years. (See **Section 3 of the Limitations of Actions Act**) As outlined in **JA Pye (Oxford) Limited v Graham** [2003] 1 AC 419 (HL) the legal requirements for a claim for adverse possession are factual possession and intention to possess.

[106] According to Lord Walker in the Privy Council case of **Wills v Wills** (2003) 64 WIR 176, which approved and applied the case of **Pye**, the expression “adverse possession” now means “that sort of possession which can with the passage of years mature into a valid title that is, possession which is not by licence and is not referable to some other title or right”

[107] The Claimants state that they have taken control of the land and have excluded all others for a period in excess of twelve years, as they have been in possession of Lot 10 from about 2004. On this point, they rely on the Court of Appeal case of **Recreational Holdings (Jamaica) Limited v Carl Lazarus and The Registrar of Titles** [2014] JMCA Civ 34.

[108] I note that in the case of **Recreational Holdings (Jamaica) Limited v Lazarus and the Registrar of Titles,** *supra*, Morrison JA (as he then was) at paragraph 55 of the judgment, stated, *inter alia*:

> *" ... 'adverse possession cannot be claimed by a person whose possession was obtained and continued by virtue of the consent, grant or otherwise from the true owner ...' . The important factor on all the authorities is that ... in order to ground a claim for adverse possession, must be (i) inconsistent with and in denial of the title of the true owner; and (ii) such that the owner is entitled to recover possession against the squatter."*

[109] The Claimants claim actual possession and indicate that they 'bushed' the lot regularly. They also indicate that they have a watchman who was instructed to keep out all others on their behalf. They have not provided any other evidence of how they physically controlled the lot or exactly when they took possession of it to the exclusion of Astoria.

[110] Astoria has not denied that WGN took possession of Lot 10 but has indicated that possession was based on its permission and authority during the course of his engagement as a contractor for Astoria, and that WGN was allowed to place a shipping container on the land which he used as a storeroom and to provide shelter for the caretaker. Astoria contends that it has continually been in possession of Lot 10, either by itself or through its watchman and that any alleged bushing of the lot had been by, and with and on the orders of the Defendant company.

[111] I prefer and accept the evidence of Eric Northover that the watchman was employed by WGN as I find it odd that Astoria would take on the responsibility of paying a watchman to oversee materials and small tools which belonged to

WGN. I therefore reject the evidence of Mr Mae that he paid the watchman until he was dismissed.

[112] I however find that when the Claimants were put into occupation of Lot 10, by Astoria, they were placed there as prospective purchasers and would then have acquired a beneficial interest in it. Astoria was the owner of the entire property and was always aware of the presence of the Claimants and consented to their occupation. There would be no 'adverse' rights which would have accrued to the Claimants. They have not shown that they have acquired the Lot 10 by adverse possession.

[113] While there is no doubt that they have been in actual possession of Lot 10 for over twelve years, and there is nothing on the evidence to suggest that Astoria did anything to challenge their possession, there cannot be adverse possession of land which is occupied with the consent and permission of the true owner. (See **Cobb v Lane** [1952] 1 All ER 1199). Additionally, they must demonstrate that in addition to factual possession they had an intention to possess the land to the exclusion of all other persons. The evidence which I accept as true is that the Claimants were put in possession by Astoria and that this was in furtherance of the agreement to purchase it.

[114] The Claimants have not provided any evidence to show that Astoria had "gone out of possession of the land or had otherwise ceased to have possession or had abandoned it during the period alleged" and neither has any evidence been presented to show that possession of the lot was taken by them and their use was in a manner which was inconsistent with and in denial of Astoria, the title holder. I therefore agree with the submissions of Counsel for Astoria that the 1st Claimant was "not a person in whose favour time could have run for the purpose of getting title to land by adverse possession"

Conclusion

[115] The conduct of the parties from the outset suggested that they considered themselves as parties to an agreement and as I have found, there was a concluded agreement between the Claimants and the Defendant evidenced by the several documents signed by the Defendant and in some cases by both Claimant and Defendant.

[116] The relationship between the 1st and 2nd Claimants is based on a resulting trust, the trustee being WGN. As trustee, WGN had standing to bring an action for specific performance and consequent on his death the executor of his estate can properly make the claim.

[117] It is clear that the Claimants have been ready, willing and able to perform the contract, delay has not been found to be a bar, and as such the Claimants are entitled to the remedy of specific performance.

[118] The alternative claim for adverse possession fails as the Claimants have shown that they were in possession of the Lot 10 with the permission and authority of the Defendant and were occupying the lot as purchasers in possession.

[119] There will therefore be judgment for the Claimants.

Disposition

[120] It is hereby ordered and declared as follows:

1. That there be specific performance of the agreement for sale of Lot 10, being all that parcel of land shown on the approved subdivision plan of Stanmore Heights prepared by Leslie Mae, Commissioned Land Surveyor, and being the land now registered at Volume 1339 Folio 282 of the Register Book of Titles within 90 days of the date of this order.

2. That the interest of WGN was held on trust for WGN Ltd. which carried out the infrastructure work to off- set the purchase price of the two lots.

3. That the 1st Claimant pay to the Defendant's attorney at law the sum of $142,568.83 being the sum outstanding on the purchase price due to the Defendant under the agreement in respect of the sale of the said Lot 10, within 30 days of the date of this order.

4. The Defendant is to execute a registrable instrument of transfer for Lot 10, registered at Volume 1339 Folio 282 of the Register Book of Titles to the 2nd Claimant and deliver to the attorneys at law for the Claimants such Instrument of transfer with registration fees, Duplicate Certificate of title, discharge of mortgage, original tax certificate and up to date certificate of payment of property taxes.

5. The attorney-at-law for the Claimants shall have carriage of sale

6. If the Defendant fails, neglects or refuses to execute the instrument of transfer or any document necessary to effect or facilitate the transfer of title within twenty-one days of being requested so to do, any one of the Registrars of the Supreme Court is empowered to execute the transfer and all such documents necessary to effect or facilitate the transfer.

7. If the Defendant fails to deliver up the Duplicate Certificate of Title registered at Volume 1339 Folio 282 of the Register Book of Titles within 21 days of being required so to do, the need for the production of the Duplicate Certificate of Title shall be dispensed with by the Registrar of Titles pursuant to Section 81 of the Registration of Titles Act.

8. Costs to the Claimants to be agreed or taxed.

9. The Claimants' attorney-at-law is to prepare, file and serve the order.

10. There shall be liberty to apply.