BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

No. 457 of 2006

BETWEEN:

COLBERT ARMSTRONG **PLAINTIFF**

AND

DONALD OLVERIE HINDS **DEFENDANT**

Before Dr. the Hon. Madam Justice Sonia Richards, Judge of the High Court.

2009: July 13, 22

2010: November 12

Mr. Gregory Nicholls of George Walton Payne & Co for the Plaintiff.

Mrs. Alicia Richards-Hill of Yearwood & Boyce for the Defendant.

JUDGMENT

The Application

[1] This is an application for summary judgment filed by the Plaintiff on 20 April, 2006, pursuant to Order 81 of the Rules of the Supreme Court, 1982.

The Plaintiff is seeking specific performance of a contract for the sale of land to him by the Defendant. The Plaintiff contends that the Defendant has no defence to his Writ filed on 15 March, 2006.

[2] The Plaintiff filed two affidavits in support of his application, on 24 May 2006, and on 30 April, 2009. The Defendant responded by affidavit on 14 May 2008. There is one other relevant affidavit of Michael Alleyne filed on 04 April 2006. Mr. Alleyne's affidavit was filed in a separate and earlier application by the Plaintiff for injunctive relief. However, it is relevant because it was referred to by the Plaintiff in paragraph 9 of his affidavit of 24 May, 2006.

Background To The Application

[3] The Plaintiff alleges that on 15 August, 1987, he entered into a written agreement with Albert Alverie Guiler ("the Vendor") for the purchase of two parcels of land at Enterprise Road, Christ Church. The purchase price was $88,732, of which $10,000 was paid as the deposit to Mr. Chezley Boyce, attorney-at-law for the Vendor.

[4] The Vendor died on 14 January, 1991, before the sale was completed. And approximately 13 years later, on 23 June, 2004, the Defendant was appointed as the administrator of the Vendor's estate. Over the years,

various attorneys-at-law have acted on behalf of the Plaintiff, the Defendant, the Vendor, and the Vendor's estate.

[5] Before his death, the Vendor retained Mr. Chezley Boyce. More recently in 2005, Mr. Boyce acting on behalf of the Vendor, issued two notices to complete the sale to the Plaintiff. These notices were dated 21 February, 2005, and 10 March, 2006, respectively. Mr. Milton Pierce also had some involvement with the Vendor's estate and this particular transaction. The Defendant was represented at different times by Mr. David Thompson Q.C., Mr. Clyde Turney Q.C. and Mr. Lindsay Bolden Q.C.. Mrs. Alicia Richards-Hill of Yearwood & Boyce, in association with Mr. Leslie Haynes Q.C., entered appearances on behalf of the Defendant in this particular application.

[6] The Plaintiff was first represented by Miss Sandra Osborne, and then by Sir Henry Forde Q.C. for a number of years. Mr. Gregory Nicholls of the law firm of George Walton Payne & Co. appeared for the Plaintiff in all the court proceedings to date, beginning with the filing of the Writ on 15 March, 2006. Prior to this date, and from about the year 2001, Mr. Nicholls'firm made several attempts to verify who was acting on behalf of the Defendant and the Vendor's estate, and to complete the sale. While the Plaintiff was being represented by the firm, Sir Henry Forde Q.C. responded to one of the notices to complete served by Mr. Chezley Boyce on behalf of the Plaintiff.

[7] Since the filing of the Writ in 2005, Mr. Nicholls has obtained two injunctions from the Court. The first injunction was granted by Goodridge J. on 07 April, 2006. It restrained the Defendant from acting on the second notice to complete issue by Mr. Chezley Boyce. No application was made by the Defendant to discharge this injunction.

[8] The second injunction was granted by Kentish J. on 10 August, 2006. This injunction restrained the Defendant from otherwise selling or disposing of the two lots of land. Again, no application was made by the Defendant to discharge the second injunction.

The Defence

[9] Subsequent to the filing of the Plaintiff's application for summary judgment on 20 April, 2006, the Defendant filed his defence on 30 May, 2006. He admitted the existence of the agreement for sale and the receipt of the deposit. However, he resisted the Plaintiff's application on the basis that:-

(1) the Plaintiff failed to complete the purchase, therefore the Defendant was entitled to repudiate the agreement, and/or treat the Plaintiff's conduct as a repudiation of the agreement which the Defendant was entitled to accept;

(2) the Plaintiff was guilty of prolonged, inordinate and inexcusable delay in bringing his action;

(3) the Plaintiff acquiesced in the matters complained of;

(4) the Plaintiff by his delay caused or permitted the Defendant to believe that the Plaintiff did not intend to enforce the agreement. As a result, the Defendant has been or will be prejudiced; and

(5) the action is statute barred under the Limitation of Actions Act, Cap. 231.

[10] On 17 March, 2008, the Defendant filed a summons seeking leave to amend his Defence. His affidavit in support of the summons, dated 01 April, 2008, revealed that in addition to the matters raised in his Defence (see paragraph [9] above), the Defendant also proposed to argue that an executed agreement for sale did not exist.

[11] In both her oral and written submissions, counsel for the Defendant further submitted that:

(1) the contract was frustrated by the delay of the Plaintiff and by the effluxion of time;

(2) the Defendant was prejudiced by the Plaintiff's delay, and should be awarded interest on the balance of the purchase price if the Plaintiff is granted specific performance of the agreement for sale; and

(3) an order for specific performance would cause hardship to the Defendant.

Order 81

[12] The relevant portions of Order 81 of the Rules of the Supreme Court provide as follows:

> "1. (1) In any action begun by writ endorsed with a claim
>
> (a) for specific performance of an agreement whether in writing or not for the sale, purchase or exchange of any property, or for the grant or assignment of a lease of any property, with or without an alternative claim for damages, ...
>
> the plaintiff may, on the ground that the defendant has no defence to the action, apply to the court for judgment.
>
> 2. ...
>
> 3. Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the action, the Court may give judgment for the Plaintiff in the action."

[13] In the recent decision of **Roseal Services Limited v. Challis et al** (Civ. Ap. No. 2 of 2009, 11 June, 2010) the Barbados Court of Appeal observed that the procedures for summary judgment under Order 14 and Order 81 have similar objectives and purposes. Speaking for the Court of Appeal, Simmons C.J. said that:

> "They are both designed to provide for speedy judgment and to prevent unnecessary and unreasonable delay in wholly unmeritorious situations. Their purpose is to enable a plaintiff

> to obtain speedy judgment where there is plainly no defence to the claim." (paragraph [13] of judgment).

[14] This Court then has to determine whether there is an issue or question in dispute which ought to be tried; or posed in the alternative, whether the defence is wholly unmeritorious and there is essentially no defence to the claim. In so doing and in keeping with the directions of the Court of Appeal in the **Roseal** case, the Court will attempt to thoroughly identify the several issues, and analyse the evidence and the applicable legal principles. (See paragraph [32] of the **Roseal** decision).

The Issues, Evidence And Legal Principles

(1) Is There An Executed Agreement?

[15] Counsel for the Defendant appears to have abandoned the Defendant's allegation contained in paragraph 19 of his affidavit of 14 May 2008 that "I am of the belief that there is no executed Agreement for Sale as alleged by the Plaintiff in his Statement of Claim.". The Defendant further pleaded that he was unable to find the agreement. And the Plaintiff could only provide what was purported to be a copy of the agreement signed solely by the Plaintiff. The Plaintiff also deposed that he recalled executing an agreement for sale. Noticeably, counsel for the Defendant made no reference to this line of defence either in her oral arguments or written submissions.

[16] Section 47 of the Property Act, Cap. 236, provides that:

> "(1) No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged or by some other person thereunder by him lawfully authorised.
>
> (2) This section applies to contracts whether made before or after 1st January, 1980 and does not affect the law relating to part performance or sales by the court."

[17] This section of the Property Act appears to be the basis of the application to amend the defence. And the Court is of the view that counsel for the Defendant was wise not to resurrect this line of defence, even though it was not officially abandoned. The relevant correspondence that was annexed to the Plaintiff's affidavit of 24 May 2006, appears to have been written against the background of an existing and valid agreement for sale. There is no allegation that any of the attorneys-at-law who worked for either the Vendor, the Vendor's estate or the Defendant ever questioned the existence of an executed agreement for sale.

[18] In his affidavit of 30 April, 2009, the Plaintiff annexed as Exhibit CA25 a letter from counsel for the Vendor, Mr. Chezley Boyce, to the Plaintiff's attorney-at-law. That letter, dated 13 January, 1989, refers to the return of "the Agreements for the above-captioned lands duly executed by my client Mr. Albert A. Guiler". Yet another exhibit to this affidavit, CA 27, reveals

that Mr. Floyd Phillips, the attorney-at-law for the financial institution that agreed to lend the Plaintiff the purchase monies, was in possession of a copy of the executed agreement. This copy was delivered on 30 August, 2004, to Mr. Vanburn Guiler, the son of the Vendor and the brother of the Plaintiff. It is improbable that the financial institution would have processed the Plaintiff's application for a loan without an executed agreement for sale. And this is confirmed by a letter from Sir Henry Forde Q.C to Mr. Floyd Phillips, dated October 10, 1989, in which mention is made of a copy of the agreement that was forwarded to Mr. Phillips under cover of a previous letter dated 16th May, 1989.

[19] Counsel for the Defendant did not challenge the validity of these documents. Nor did she suggest that the copy of the agreement exhibited by the Plaintiff did not contain all the terms of the agreement for sale. Furthermore, in keeping with clause 2 of the document exhibited by the Plaintiff, Mr. Chezley Boyce issued a receipt to the Plaintiff acknowledging the payment of a deposit of ten thousand dollars. There is no allegation that this deposit was not paid by the Plaintiff, or that it was returned to the Plaintiff, or that it was forfeited by either the Vendor or the Defendant.

[20] The Court finds that there are no triable issues in relation to the existence and/or validity of an executed agreement for sale. In the words of the Privy

Council in the Trinidad & Tobago case of **Balbosa v Ali ((1990) 37 WIR 447)** this particular pleas "can only be described as preposterous" (see p.449 of judgment).

(2) Is The Plaintiff's Claim Statute Barred?

[21] The Defendant submitted that if the Plaintiff's claim is founded on a breach of contract, it was statute barred by 1994. Alternatively, if it is an action for the recovery of land, the Plaintiff's right to recovery ended in 1998. These time frames are arrived at by using 30 January, 1998, as the date on which time began to run against the Plaintiff. 30 January, 1998 is the date agreed for completion of the contract.

[22] The Limitation of Actions Act, Cap.231, makes provision for limitation periods in relation to simple contracts and specialty contracts. The relevant sections provide as follows:-

> "14. Subject to section 15, no action founded on simple contract may be brought after the expiration of 6 years from the date on which the cause of action accrued.
>
> ...
>
> 17(1) No action on a specialty may brought after the expiration of the 12 years from the date on which the cause of action accrued."

[23] Counsel for the Defendant cited section 14 of the Limitation of Actions Act, and submitted that if the Plaintiff's action was based on a breach of a simple contract, it was statute barred because 6 years had expired since the cause of action accrued. No mention was made of section 17(1) of Cap. 231, and it was not suggest that a 12 year limitation period for a specialty contract applied to the Plaintiff's action.

[24] There is also another section of Cap. 231 that is relevant to an application for specific performance. It is section 58 which provides that:

> "The following time limits do not apply to any claim for specific performance of a contract, for an injunction or for other equitable relief
>
> (a) ...
>
> (b) the time limit under section 14 for actions founded on simple contract;
>
> (c) ...
>
> (d) the time limit under section 17 for actions on a specialty.".

The Plaintiff's action has to be considered within the context of section 58 of the Act, as it includes a claim for specific performance of a contract for the sale of land. However, counsel for the Defendant argued that despite the waiver of time limits in section 58, equity must apply the limitation period by analogy.

[25] Section 58 is similar to section 36 (1) of the United Kingdom (UK) Limitation Act, 1980. Section 36(1) of the U.K. legislation also excludes the time limits for actions founded on simple and specialty contracts. But the U.K. section goes further, and waives the time limits with the following proviso:

> "....except in so far as any such time limit may be applied by the court by analogy in like manner as the corresponding time limit under any enactment repealed by the Limitation Act 1939 was applied before 1st July 1940."

[26] The U.K. Court of Appeal in interpreting section 36(1) has held that in the case of a claim in equity for the remedy of specific performance, it was inappropriate to apply, by analogy, the limitation period which applied in law to the underlying contract. In **P&O Nedlloyd BV v. Arab Metals Co. (The "UB Tiger" (No.2)) ([2007] 2 Lloyd's L.R. 231)**, the Court of Appeal reasoned that the application of the limitation period by analogy is not appropriate in relation to claims for specific performance. Even in the absence of a proviso similar to that in section 36(1) of the U.K. act, the **Nedlloyd** decision is a highly persuasive authority for a Barbados Court.

[27] Moore-Bick LJ, speaking for a unanimous Court of Appeal, reviewed the case law and concluded that:

> "It is not surprising that equity should apply by analogy the limitation periods applicable to claims at law for any account and for damages for breach of duty, whether in contract or tort, to claims for an account and for equitable compensation.

> In each case the same facts give rise to a claim, whether at law or in equity, and the same kind of relief is obtainable. A claim for specific performance raises different considerations, however both because relief comparable to that available from the courts of equity was not available from the common law courts and because the facts needed to support a claim for specific performance are not in all respects the same as those necessary to support a claim for breach of contract." (p.242 para.43).

[28] In light of the **Nedlloyd** decision, there is no triable issue with respect to the type of contract, that is, whether the agreement for sale constitutes a simple or a specialty contract. And, in the context of sections 14 and 17(1) of the Limitation of Actions Act, there is no triable issue concerning "the date on which the cause of action accrued.".

[29] It was also argued on behalf of the Defendant that the Plaintiff's action may be one for the recovery of land, and as such, is also statute barred under section 25(1) of the Limitation of Actions Act. Section 25(1) provides that:

> "Subject to subsection (2) no action shall be brought by any person to recover land after the expiration of 10 years from the date on which the right of action accrued to him, or if it first accrued to some person through whom he claims, to that person.".

Buckley L.J. explained in **Williams v. Thomas** ([1909] 1 Ch.713), that:

> "...the expression 'to recover any land'...does not mean regain something which the plaintiff previously had and has lost, but means 'obtain any land by judgment of the court', yet it is not limited to the meaning 'obtain possession of any land by judgment of the court'. For it has been held that a mortgagee's

> action for foreclosure is an action for the recovery of land within the Act." (p.730).

[30] Buckley L.J. was referring to the words "to recover any land" in section 2 of the U.K. Real Property Limitation Act, 1874. This dictum was applied in another jurisdiction where it was held that whether a particular action was for the specific performance of an agreement for the sale of land or for a declaration of title to land, it was essentially an action to recover land. (See **Nasri v. Mesah [1971] 1 MLJ32).**

[31] But even if the Plaintiff's action is for the recovery of land, the Defendant must show that a right of action for the recovery of land actually accrued to the Plaintiff. On the other hand, the Plaintiff cannot take refuge in section 58 of the Limitation of Actions Act or in the **Nedlloyd** decision, as an answer to section 25(1), because section 58 does not waive the 10 year time limit under section 25(1). Section 25(1) states that the limitation period runs from "the date on which the right of action accrued". In comparison, sections 14 and 17(1) refer to the accrual of a "cause of action". Section 2(2) of the Act further provides that references in the Act:

> "(a) to a right of action to recover land include references to a right to enter into possession of the land or, in the case of rent charges, to distrain for arrears of rent".

[32] In **A.G. v. Sudeley** ([1896] 1 Q.B. 354 (C.A.) at p. 359), Lord Esher M.R. explained that:

> "What is called a "right of action" is not the power of bringing an action. Anybody can bring an action, though he has no right at all. The meaning of the phrase is, that the person has a right or claim before the action which is determined by the action to be a valid right or claim.".

A right of action is the means of enforcing a legal right (See **Dwidag v. Zutphen** (1987) 35 D.L.R. (4th) 433 (C.A. Canada).

[33] In **Suchit v. Sherani** ([1974] A.C. 605), the Privy Council considered section 1 of the U.K. Real Property Limitation Act, 1874, which was applicable to Fiji by virtue of a 1955 Fiji law. Under section 1, an action or suit to recover land had to be brought "within 12 years next after the time at which the right to make such entry ... or bring such action, shall have first accrued ...". In a majority judgment, the Law Lords found that under certain agreements for the sale of real property, the purchasers were obliged to pay the entire purchase price only if they defaulted in payment of the instalments, and if the vendor elected to demand payment in full. Likewise, the right to possession only accrued to the vendor if he elected to rescind the contract. Therefore, the purchaser's possession of the land was not adverse to the vendor until the vendor exercised the right to rescind, and the action was not statute barred.

[34] The Canadian case of **Jacob v. Nicth** ([1984] 3W.W.R. 339), is also instructive. There, the Saskatchewan Court of Appeal considered a limitation section that required the action to be brought within 10 years after the right of action first accrued. A purchaser of land, who took immediate possession under the agreement for sale, was held to have had no right of action. He had no right to call for title until the purchase price plus interest was paid in full. Therefore, it was only when the purchase price and interest were tendered that the right to call for title arose, and the right to bring the action first accrued. Accordingly, the action was not statute barred.

[35] In order for the limitation period in section 25(1) to apply to the Plaintiff's action, the Defendant must show that the Plaintiff had a legal right to recover land from either the Vendor or the Defendant. Clause 5 of the agreement for sale, exhibited in the Plaintiff's affidavit of April 30, 2009, states that "The Purchaser will be given vacant possession on completion of the sale and purchase,". And, by clause 3 of the agreement, the balance of the purchase price is to be paid by the Plaintiff prior to completion on or before 30 January, 1988.

[36] It is not in dispute that the Plaintiff has never paid the balance of the purchase price. Therefore, he never became entitled to vacant possession of the lands, and he had no legal right to possession of the lands. It follows that the

Plaintiff had no right of action to recover land, and in the circumstances of this case the limitation period in section 25 (1) does not apply. It follows that, there are no triable issues arising under section 25(1) of the Limitation of Actions Act.

[37] Although the Plaintiff's action is not statute barred by the limitation legislation, the act preserves the equitable defences of laches and acquiescence. Section 4 provides that:

> "Nothing in this Act affects any equitable jurisdiction to refuse relief on the ground of laches or acquiescence.".

Thus, a court is entitled to consider whether the Plaintiff's action for specific performance should be refused either because of undue delay in the filing of his claim, or because he led the Defendant to believe that he would not enforce his rights under the agreement.

(3) Laches

[38] The issue of delay is central to the defence. The Defendant accused the Plaintiff of prolonged, inordinate and inexcusable delay in filing his action for specific performance. He also alleged prejudice as a result of the Plaintiff's delay. It was also argued on behalf of the Defendant that conditions for the repudiation of the agreement for sale arose as a result of the frustration of the contract by the Plaintiff's delay.

[39] The Privy Council has stated that:

> "... the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it could be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time or delay are most material.". (See **Lindsay Petroleum Co. v. Hurd** (1874) L.R. 5P.C 221, at p. 239-240).

This statement of law by Lord Selbourne L.C. was approved in the **Nedlloyd** case (at p. 246 paragraph 61).

[40] There was undoubtedly a prolonged and inordinate delay in the performance of the agreement for sale. The agreement was concluded in August, 1987, approximately 23 years ago. But can it be said that the delay was inexcusable and the fault of the Plaintiff? And even if the delay was not the fault of the Plaintiff, should a court of equity, given the many years that have elapsed, make an order for specific performance?

(i) Was The Plaintiff Responsible For The Delay?

[41] In Spry's "The Principles Of Equitable Remedies", (7th ed. 2007), the general rule of law is stated thus:

> "... in order to establish that the delay of the plaintiff has been excessive it must appear that, in all the material circumstances, a reasonably assiduous person would have proceeded with substantially greater speed or diligence. All the acts of the parties and all the circumstances of the particular

> case must, accordingly, be examined in order to establish whether this condition is satisfied." (p. 227 – 228; see also **Wroth v Tyler** [1974] Ch. 30).

[42] Counsel for the Defendant submitted that there were triable issues with respect to laches. She queried why the Plaintiff took no action prior to the filing of the writ in 2006, if he was ready and willing to complete the sale since 1991. The undisputed documentary evidence filed by the Plaintiff shows that the Vendor died on 14 January, 1991. A letter from the Plaintiff's counsel to Mr. Floyd Phillips dated September 28, 1991, reveals that by that date the Vendor's wife had also died. The Vendor's wife was unable, therefore, to administer his estate or complete the sale.

[43] M.P. Thompson in "Barnsley's Conveyancing Law and Practice", (1996 4th ed.) states that:

> "The basic rule is that the death of either, or both, of the parties before completion does not avoid a contract for the sale of land. It remains enforceable by and against the deceased's personal representatives". (See **Hoddel v. Pugh** (1864) 33 Bear 489).

Thompson continues that with respect to the death of a vendor:

> "If he is selling as sole beneficial owner, the legal estate in the land and his beneficial interest in the purchase money vest in his personal representatives who should complete the contract." (p. 258)

[44] It was not until 23 June, 2004, that the Defendant was appointed as the administrator of the Vendor's estate. Between 1991 and 2004 there was no

vesting of the Vendor's legal estate in any person. Therefore, there was no person against whom the Plaintiff could have filed an action to enforce the contract. And there was no personal representative to complete the contract prior to 2004. The Plaintiff's documentation shows that up to the time when the administrator was appointed in 2004, the delay in completion was attributable significantly to the Vendor.

[45] The Plaintiff's attorney-at-law was informed in 1991 by Chezley Boyce that Mr. Milton Pierce was acting on behalf of the Vendor's estate. Indeed, correspondence passed between the Plaintiff's attorney-at-law and Mr. Pierce dated 25 February, 1992, in which it was stated that "I am extremely concerned and distressed at the length of time it has taken for the Vendor to produce certain documents in particular the Town Planning document. The delays have also put [the Plaintiff's] loan in jeopardy." Surprisingly, by letter of 7th August, 2001 to the Plaintiff's counsel, Mr. Pierce, disavowed all knowledge of the transaction. Mr. Pierce advised that "I am not acting for the Estate of Guiler and in any case, have never dealt with the particular transaction under reference.".

[46] It was suggested that the Plaintiff should have applied for a limited grant of administration, and that he should not have waited for an administrator to be appointed. No legislative provision, rule of common law or case law was

advanced on behalf of the Defendant to support this proposition. It cannot be reasonable to require a Plaintiff who borrowed money to pay for the lands, to undertake further expenditure to complete the transaction. There is no allegation by the Defendant that the expenditure would have been minimal or that the Plaintiff would have received a limited grant of administration within a significantly reduced time frame. The Plaintiff has also exhibited a letter dated October 07, 2003, in which counsel for the Defendant referred to outstanding issues with the Vendor's estate that needed to be resolved.

[47] The facts of this case differ from the facts of the **Balbosa** case (see parag. [20] supra). In **Balbosa** the agreement for sale was dated 21 March 1974, and the vendor died on 09 July, 1974. There was a considerable delay in obtaining administration of the vendor's estate. The purchaser contributed various sums from the purchase price towards the payment of estate duty and the application for administration. The letters of administration were issued on 03 June 1977. The Defendant in the present case has not alleged that the Plaintiff was ever asked to contribute the balance of the purchase price towards the acceleration of the administration process. In any event, the Court cannot assume that the Plaintiff's creditor would have consented to the proceeds of the loan being utilised in this manner.

[48] In March 1992, counsel working on behalf of the beneficiaries of the Vendor's estate was informed of the Plaintiff's interest in part of the estate, and his desire to complete the sale and purchase. The Defendant was similarly informed, by letter dated 18 November, 2002, before he was granted administration. Another letter dated September 27, 2005 was one of several sent to the Defendant's then lawyer Chezley Boyce. These letters informed the Defendant that the Plaintiff was willing to complete, and requested an engrossed conveyance for the Plaintiff's execution.

[49] Clause 06 of the affidavit of Michael Alleyne, filed on 04 April, 2006, deposed as follows:

> "I was instructed by the Plaintiff to commence an action in the High Court of Justice in order to obtain an order of specific performance of the said agreement inter alia since the Defendant or his Attorney-at-Law did not make any satisfactory effort to bring this transaction to a close.".

The Writ was filed accordingly on 15 March, 2006 and the Court finds that it was not unreasonable for the Plaintiff to give the Defendant time to complete the sale and purchase after his appointment as administrator of the Vendor's estate. There was no prolonged, inordinate or inexcusable delay between the grant of letters of administration and the filing of the Writ seeking specific performance.

(ii) Was There Prejudice To The Defendant?

[50] The Defendant alleges that he has been prejudiced or will be prejudiced because the Plaintiff's delay caused him to believe that the Plaintiff had waived his rights under the agreement. Again, the Plaintiff's documentation suggests otherwise. There is no credible evidence that the Plaintiff either waived his rights under the agreement, or acquiesced by allowing the Defendant to believe that he would not enforce his rights under the contract. Indeed, the Defendant's attempts to advertise the lands for sale were made after Chezley Boyce had issued the first notice to complete dated 21 February, 2005.

[51] Another facet of the allegation of prejudice is the obvious rise in the value of the lands since 15 August, 1987. The practical effect of the delay in completion has been the escalation in the value of the land. Counsel for the Defendant submitted that interest at 10 per cent on the balance of the purchase price of $78,732.00 computed from January 1998 to January 2009, would amount to approximately $165,337.00. Principal and interest, she argued, would mean an outstanding amount of $244,069.00 payable by the Plaintiff.

[52] Clause 14 of the agreement provides that:

> "If owing to the default of the [Plaintiff] the purchase is not completed at the time hereinbefore mentioned namely the 30th day of January, 1988, the [Plaintiff] shall pay to the Vendor interest at the rate of ten dollars ($10.00) per centum per annum on all of the unpaid balance of the purchase money from that date namely the 30th day of January, 1988 up to an including the date of actual completion of the sale and purchase ...".

This clause provides the only circumstance in the contract under which the Plaintiff is to pay interest on the unpaid balance of the purchase price. That circumstance is the default of the Plaintiff in not completing the purchase by 30 January, 1988. By that date neither party was in a position to complete, so it cannot be said that the failure to complete was due to the default of the Plaintiff. Therefore, there is no contractual basis on which the Plaintiff can be called upon to pay interest.

[53] The Court has already found that the delay in completion has been substantially at the doorstep of the Vendor. And the Defendant's claim for interest was not grounded in the allegation of delay on the part of the Plaintiff. Rather, the Defendant is asking for interest on the balance of the purchase price if the Court allows the claim for specific performance. It is also noted that nowhere in the Defendant's pleadings is there a claim for interest on the purchase money due to the Defendant.

[54] There is another consideration relevant to the request by the Defendant for interest. It is that the Plaintiff in his Writ also claimed damages, either as an alternative to specific performance, or in addition to specific performance. In **Engle v. Fitch** ((1869) LR 4Q.B. 659), it was held that the measure of damages for breach by the vendor of a contract for the sale of land was the difference between the contract price and the value at the time of the breach of contract.

[55] If the breach of the contract in this case occurred after the Defendant was appointed administrator in 2004, then the measure of damages may amount to the same as the outstanding purchase price and interest asked for by the Defendant. It follows that any perceived prejudice to the Defendant could well be the same whether he conveyed the lands at the agreed price, or kept the lands and paid the difference in value as damages.

(iii) Was The Agreement Frustrated?

[56] The Defendant further contended that the agreement for sale was frustrated by the Plaintiff's delay. The classic statement on the test for frustration of a contract is found in **Davis Contractors Ltd. v. Fareham U.D.C.U** ([1956] A.C. 696). In that case Lord Radcliffe said:

> "... frustration occurs whenever the law recognises that without default of either party a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render

> it a thing radically different from that which was undertaken by the contract. Non haec in foedera veni. It was not this that I promised to do .... There must be ... such a change in the significance of the obligation that the thing undertaken would, if performed, be a different thing from that contracted for.". (p. 729)

[57] And in **National Carriers Ltd v. Panalpina (Northern) Ltd.** ([1981] A.C. 675), the test was restated by Lord Simon in this way:

> "Frustration of a contract takes place when there supervenes an event (without default of either party and for which the contract makes no sufficient provision) which so significantly changes the nature (not merely the expense or onerousness) of the outstanding contractual rights and/or obligations from what the parties could reasonably have contemplated at the time of its execution that it would be unjust to hold them to the literal sense of its stipulations in the new circumstances; in such case the law declares both parties to be discharged from further performance.". (p.700)

[58] On the facts of this case the blame for the inordinate delay cannot be laid at the doorstep of the Plaintiff. He was caught by the unfortunate circumstance of the death of the Vendor, and the protracted efforts to have an administrator appointed for the Vendor's estate. The Plaintiff was in a better position to avoid the agreement, if he so chose, by pleading the delays on the part of the Vendor and the Defendant.

[59] The Vendor's death cannot be viewed as a supervening act that significantly changed the nature of the rights and obligations of the parties under the agreement. The basic rule is that the death of either party, before completion

of a contract for the sale of land, does not avoid the contract. The contract remains enforceable by and against the personal representative of the deceased. (See paragraph [43] of this judgment).

[60] Messrs. Abbey & Richards in "A Practical Approach to Conveyancing", (2005, 7th ed.), state that on the death of a seller, his

> "... personal representative cannot give good title until the Probate Registry have issued the grant of representation. Accordingly the buyer from a personal representative can lawfully refuse to complete until the grant is issued. This may cause completion to be delayed beyond the contractual completion date and any resultant liability for compensation and damages would fall naturally upon the deceased's estate. (p. 205, para. 6.12.2.1)

(iv) Are Triable Issues Raised By the Allegation of Delay?

[61] The Court finds that this aspect of the Defendant's case is untenable, because the allegation of prolonged, inordinate and inexcusable delay on the part of the Plaintiff cannot be sustained. The delay complained of was caused by the Vendor's death. And the Plaintiff was not responsible for the time taken to obtain letters of administration for the Vendor's estate. There was no waiver of rights by the Plaintiff, such as to cause prejudice to the Defendant. Further, there is no contractual basis on which the Defendant can claim interest on the unpaid balance of the purchase price. In any event, the claim for interest by the Defendant is predicated on the grant of an order for specific performance by the Court, and not on any finding either of delay

by the Plaintiff or prejudice to the Defendant. The Court also found that there were no supervening event to cause frustration of the agreement for sale on the facts of this case. Therefore, there are no triable issues arising out of the Defendant's allegation of delay.

(4) Repudiation Of The Contract

[62] The Defendant contends in his pleadings that as a result of the Plaintiff's failure to complete the purchase, he was entitled to repudiate the agreement, and/or treat the Plaintiff's conduct as a repudiation of the contract which he was entitled to accept. The general law states that where one party wrongfully repudiates a contract, the contract is not discharged until the other party accepts the repudiation, and his acceptance is communicated to the repudiating party. The other party may also elect to ignore the repudiation, and by so doing the contract remains in effect for the benefit of both parties (See "Chitty On Contracts", Vol. 1, 30th ed, para 24-001 – 24-013).

[63] In **Sookraj v. Samaroo** (2004) 65 WIR 401at 407c), Lord Scott of Foscote described the abovementioned statements of the law as "basic and well-known principles.". Speaking on behalf of the Privy Counsel, he stated that:

> "... a repudiation does not itself determine the contract. It gives a right to the innocent party, by accepting the repudiation, to determine the contract. If the innocent party does not accept the repudiation, the contract remains in existence for the benefit

> of both parties. The acceptance of a repudiation requires no particular form. But it must be unequivocal and it must be communicated to the party in breach ...".

[64] The original date agreed for the completion of the sale was 01 January 1988, and time was not made of the essence in the executed agreement. After 01 January 1988, there was no date for completion, and the contract was an open contract. (See **Hope v. Rodney And Portfolio Investments Limited** (BB 2009 CCJ 7)). That date having passed without completion, there is no evidence that either party, prior to the grant of administration to the Defendant, alleged that the contract had been repudiated by the other, or communicated acceptance of an alleged repudiation.

[65] Neither party made an attempt to make time of the essence before the issue of the two notices to complete by Chezley Boyce. In the Privy Council case of **Graham v. Pitkin** ([1992] 2 All E.R. 235), Lord Templeman stated the law with respect to contracts for the sale of land where time was not made of the essence.

> "It is common ground that time is not of the essence of a contract for the sale of land in the absence of an express term to that effect or in circumstances which imply that time is of the essence; see *Stickney v. Keeble and Another [1915] A.C. 386.* If a vendor serves a valid notice requiring completion within a reasonable time and the purchaser fails to complete in accordance with the notice, the failure can be treated by the vendor as a repudiatory breach which the vendor is entitled to accept by rescission: *United Scientific Holdings Ltd. v. Burnley B.C [1978] A.C. 904* per Lord Simon of Glaisdale at page 946.

> In the absence of a valid notice to complete a purchaser is entitled to specific performance unless his conduct has been such as to render it inequitable for specific performance to be granted." (page 237f-h).

[66] After the appointment of the Defendant as administrator of the Vendor's estate, two notices to complete were issued by Mr. Chezley Boyce on 21 February 2005, and 10 March, 2006. The first notice made time of the essence, and gave a completion date of 21 March, 2005. This date passed and no action was taken by the Defendant to claim repudiation by the Plaintiff, or to forfeit the deposit. The second notice, sent after the Writ was filed, also made time of the essence, with a completion date of 07 April, 2006. In response to this notice, the Plaintiff applied to the Court and obtained an injunction to restrain the Defendant from acting on the notice. The Defendant has made no attempt to have this injunction discharged.

[67] The Court has concluded that both of Mr. Boyce's notices were invalid. When these notices were issued, the Defendant was not in a position to complete the sale. Mr. Boyce was informed by Miss Osborne by letter of 20 December, 1988, that the Plaintiff had obtained a loan to assist with the purchase. However, according to the several pieces of correspondence exhibited by the Plaintiff, documents pertaining to the Vendor's title were not produced in a timely manner. Even after the Vendor's death, a request was being made for sight of a grant dated 12 May 1950 from the Vendor to

F.F. Manning. The Plaintiff's attorney-at-law wanted to ascertain how the grant of a right of way to Manning would have affected the lands to be purchased by the Plaintiff. None of these letters were challenged by the Defendant.

[68] In response to the second notice, Mr. Boyce was advised by letter of 23 March, 2006, that a number of things needed to be done by or on behalf of the Defendant before completion was possible. Again, the Defendant has not suggested that this letter does not contain an accurate account of the state of affairs between the parties prior to the filing of the Writ. The letter was issued by Sir Henry Forde Q.C. to Mr. Boyce, apparently without the knowledge that other counsel had filed the Plaintiff's Writ seeking specific performance of the contract. The letter states:

> "Dear Mr. Boyce,
>
> **Re: Colbert Armstrong purchasing from the Estate of**
>
> **Albert A. Guiler deceased.**
>
> We acknowledge receipt of your letter to us dated the 10th March, 2006 which was received on the 16th March, 2006.
>
> The Draft Conveyance sent to us in 1989 which listed Mr. Albert Guiler as Vendor was perused on the 30th October, 1989, and returned to you. Since then, we were advised that Mr. Guiler had died and that Mr. Milton Pierce was acting for the Vendor's wife who was also filing an Application to administer his estate. We were subsequently advised that Mrs. Guiler had also died. All efforts to have Mr. Pierce deliver the Letters and re-issue the new draft Conveyance up to 1995

> failed and no further word was received until you wrote to Mr. Armstrong on the 21st February, 2009.
>
> When we spoke ... on the 14th March, 2005, it was agreed that you would send us a new draft Conveyance since that issued in 1989 would not recite the particulars of these deaths and of the new Vendor. This has not been received.
>
> We are therefore of the view that you must issue the new draft Conveyance and give sufficient time to complete. Since it is the Vendor who was unable to complete because Mr. Guiler and then Mrs. Guiler died and Mr. Milton Pierce who represented the estate has never produced the Letters of Administration or the new draft Conveyance, no question of forfeiture arises. The purchase therefore requires that the Vendor take steps to complete the transaction.
>
> We look forward to hearing from you on the matter.".

[69] The two notices to complete from Chezley Boyce clearly had no legal validity. Lord Templeman is of the view that in such circumstances, that is, in the absence of a valid notice to complete, the Plaintiff is entitled to specific performance unless his conduct has made it inequitable for a court to grant specific performance. (See **Graham v. Pitkin** at paragraph [65] of this judgment.)

[70] The unchallenged documentary evidence provided by the Plaintiff demonstrates that he did not fail to complete the contract. He could not complete as a result of the deaths of the Vendor and the Vendor's wife; the length of time taken to appoint an administrator for the Vendor's estate; and the failure by Chezley Boyce to provide the grant showing the right of way

to Mr. Manning, and to attend to outstanding conveyancing matters. There are no triable issues here in the absence of any evidence demonstrating a repudiation of the agreement for sale by the Plaintiff. On the contrary, the Plaintiff has presented himself consistently as ready, willing and able to complete the contract.

[71] Having found that the two notices to complete issued by Chezley Boyce were invalid, it would be convenient at this point to consider other conclusions to be drawn from these notices. The notices demanded completion of the sale and purchase by a stipulated date and time. They also threatened forfeiture of the deposit, and the immediate cancellation of the sale and purchase if the Plaintiff did not rigorously observe the time frames.

[72] The Defendant has never alleged that Mr. Boyce was not authorised to send these notices on his behalf. Therefore, these notices demonstrate that the Defendant considered the agreement for sale to be subsisting. They also confirm that the Defendant expected completion of the agreement to be on the same terms initially agreed between the parties. More importantly, the notices show that the Defendant sought completion even after the Plaintiff's Writ was filed. The Court finds that by consenting to the delivery of the notices, the Defendant waived any issues raised with respect to delay and repudiation of the contract by the Plaintiff.

(5) Hardship

[73] Counsel for the Defendant contended that the Court should consider the hardship that would be caused to the Defendant, if an order for specific performance is granted to the Plaintiff. Hardship is recognised as a defence to a claim for specific performance. The learned authors of "Chitty On Contracts", (Vol. 1, 13th ed, 2008), posit that:

> "Specific performance may be refused on the ground that the order will cause severe hardship to the defendant ... Severe hardship may be a ground for refusing specific performance even though it results from circumstances which arise after the conclusion of the contract, which affect the person of the defendant rather than the subject matter of the contract, and for which the claimant is in no way responsible .. . On the other hand, "mere pecuniary difficulties" would "afford no excuse"." (para. 27-031)

[74] The defence of hardship was not raised in the pleadings in this case. Moreover, no facts were alleged in support of severe hardship to the Defendant. In **Patel v. Ali** ([1984] Ch 283), Goulding J. held that unforeseen post-contract changes in the personal circumstances of a defendant would inflict hardship amounting to an injustice if a decree of specific performance was granted against her. In the present case, the relevant post-contract circumstance was the death of the Vendor. But as noted earlier, the law recognises and accepts that agreements for the sale of land are concluded after the death of either the vendor or the purchaser. The

death of a vendor is not a circumstance of severe hardship. In addition, it was not argued on behalf of the Defendant that an increase in the value of the lands would be a severe hardship to him. The Court was only required to consider increasing the purchase price, if a decree of specific performance is granted to the Plaintiff.

Result Of Application Of The Roseal Directions

[75] Following the **Roseal** directions, the Court has sought to identify the several issues, and to conduct an analysis of the evidence and the applicable legal principles. The result of that exercise is as follows:

(1) a validly executed agreement for sale exists, and there are no triable issues touching on the validity of the agreement.

(2) the Plaintiff's claim is not statute barred under the Limitation of Actions Act, Cap. 231. In view of the **Nedlloyd** decision, the limitation legislation does not apply to claims for the equitable remedy of specific performance. Even if the Plaintiff's application is considered to be an action for the recovery of land under section 25(1) of Cap. 231, no right of action for the recovery of land had accrued to the Plaintiff. Consequently, no triable issues of substance arise with respect to Cap. 231.

(3) on the issue of laches, while there was a prolonged and inordinate delay in the performance of the agreement for sale, that delay was largely attributable to circumstances resulting from the death of the Vendor. The Court also found that there was no credible evidence that the Plaintiff either waived his rights or led the Defendant to believe that he would not enforce his rights under the agreement for sale. In addition, the agreement did not provide for the payment of interest on the unpaid balance of the purchase price. The contract was not frustrated, and no triable issues arose out of the allegation of delay.

(4) the Plaintiff was not responsible for the non completion of the agreement, and the Defendant was not entitled to repudiate. Any breach of the agreement by the Defendant was not accepted by the Plaintiff, and the Plaintiff wishes to complete the contract. No triable issues arise with respect to the repudiation of the agreement for sale.

(5) The two notices to complete, issued on behalf of the Defendant, were invalid. However, the issue of the notices demonstrated that the Defendant considered the agreement for sale to be

subsisting, and that he was willing to complete on the same terms in March of 2006, after the filing of the Plaintiff's Writ. The Defendant's complicity in Mr. Boyce's action further negated any triable issues related to the allegations of delay and repudiation of the agreement by the Plaintiff.

(6) The Defendant's pleadings raised no issues with respect to hardship, and nothing was advanced to establish severe hardship either to the Defendant or to the Vendor's estate, or to third parties.

[76] The legal issues are straightforward and clear-cut, and the Court concludes that there is no question or issue in dispute that ought to be tried. There is essentially no defence to the claim. The Court is also guided by the finding that there are no real disputes of fact. The Defendant has not challenged the documentary evidence produced by the Plaintiff. Therefore, the relevant factual evidence, such as would enable the Court to make proper findings and determinations on legal issues, was capable of easy resolution. Neither has the Defendant shown that a full trial of the matter would elicit any additional relevant facts.

[77] The documentation before the Court was not overly complex or overwhelming. And it certainly did not match the abundance of

documentation generated in **British and Commonwealth Holdings plc v. Quadrex Holdings Inc,** ([1989] 3 All E.R. 492). The oral and written submissions by counsel for the parties did not contain a preponderance of complex factual or legal issues or legal authorities. For these reasons the Court is inclined towards the grant of summary judgment to the Plaintiff under Order 81.

A Discretionary Remedy

[78] Although disposed to entering judgment for the Plaintiff, the Court must bear in mind that the Plaintiff's application is for the discretionary remedy of specific performance. The Defendant's lack of a viable defence does not automatically entitle the Plaintiff to the decree of specific performance. In "Barnsley's Conveyancing Law and Practice", reference is made to two conditions precedent to a claim for specific performance.

> "... the plaintiff must establish two basic requirements. First, there must be a concluded contract, the terms of which are sufficiently certain for the court to order their performance ... Secondly, the plaintiff must himself be able and willing to perform his own part of the contract, and it is standard practice for his statement of claim to contain an allegation to this effect.". (1996, 4th ed., p. 615)

[79] With respect to the first condition precedent, this Court found that a validly executed agreement for sale existed, and that the terms of that agreement are those contained in the document, Exhibit CA 24, attached to the

Plaintiff's affidavit filed on 30 April, 2009. (See paragraphs [15] to [20] of this judgment). With respect to the second condition precedent, the Plaintiff's pleadings allege that he is ready to perform his part of the contract.

[80] Paragraph 6 of the Statement of Claim, filed on 15 March, 2006, stated that:

> "At all material times the plaintiff has been ready, willing and able to perform his own outstanding obligations under the said agreement.".

Also, at paragraph 4 of his affidavit filed on 30 April, 2009, the Plaintiff further pleaded that:

> "I am advised and verily believe that the Vendor's inability to satisfy issues as to the title and other requisitions was the principal reason why the mortgagee did not release any funds to my then Attorney-at-Law in order to complete this transaction. At all other material times I have been ready, able and willing to complete this transaction.".

[81] Ms. Osborne's letter of 20 December, 1988, to Chezley Boyce confirmed that the Plaintiff had received a loan to assist him in the purchase of the lands. And by letter of 25 February, 1992, to Mr. Milton Pierce, Sir Henry Forde complained that the delays in completion had put the Plaintiff's loan in jeopardy. However, at the time of filing his Writ the Plaintiff declared himself ready, willing and able to complete the transaction.

[82] The law does not require the Plaintiff, in the circumstances of this case, to have the purchase money available when his claim for specific performance

was filed. In the Barbados case of **Hope v. Rodney And Portfolio Investments Limited** (BB2009 CCJ7), the Caribbean Court of Justice (CCJ) confirmed that:

> "In a contract for the sale of land the purchaser's fundamental obligation is to pay the purchase price to the vendor in return for the executed transfer documents at the time fixed for completion if this time is expressly made of the essence by the contract or by a valid and effectual notice to complete. If a purchaser files a claim for specific performance, the purchaser is not under an obligation to have the purchase monies in hand at the time the claim is filed. In such a case … the vendor will have indicated that he is not willing to perform his side of the bargain.". (paragraph [24]).

[83] The CCJ in the **Hope** case also held that:

> "In the circumstances like those in the instant case the relevant time at which the plaintiff purchaser must have the capacity to complete by paying off the purchase price is when he deploys his evidence in support of his claim for specific performance i.e. at the trial or at the hearing of an application for summary judgment." (paragraph [26]).

[84] The CCJ expects that the Plaintiff will deploy his evidence, to support his ability to pay the purchase price, when his application for summary judgment is heard. However, unlike the **Hope** case, the Defendant here has not made an issue of or questioned the Plaintiff's ability to pay the remainder of the purchase price. When the **Hope** case was tried at first instance, a central issue before the High Court was whether the purchaser

had the requisite funds to pay the balance of the purchase price. (See paragraph [4] of the CCJ decision).

[85] The circumstances differ in the present case in so far as there is no challenge to the Plaintiff's ability to pay. Neither side cross-examined the affidavit evidence of the other. In particular, the Defendant never sought to challenge the Plaintiff's assertion in the Writ that he was ready, willing and able to complete his part of the bargain. Therefore, there was no need for the Plaintiff to go beyond his pleadings by providing evidence of his ability to pay the purchase price. The Court accepts that the Plaintiff is able to perform his part of the bargain if an order is made for specific performance.

Completion After Two Decades

[86] The Court in considering the issue of laches, had raised the question whether a court of equity should grant specific performance some 23 years after the parties entered into the agreement for sale. The Court gave its reasons why the defence of laches could not be sustained. In addition to those reasons, the Court notes that the Defendant has not alleged any prejudice to third parties, such as the beneficiaries of the Vendor's estate.

[87] Cases in which an order for specific performance was made several years after the initial contract are not the norm. One example is the case of **Andvick v. Westerlund** (No. 160 of 1998, 04 December 2000), where the

High Court of the Commonwealth of Dominica made an order for specific performance of two parcels of land that the purchaser agreed to buy on 01 November, 1973. The vendor in the **Andvick** case died in 1978, and it was not until 1996 that the defendant obtained Letters of Administration to the vendor's estate.

[88] The Privy Council has held, in an appeal from Barbados, that the question whether a court should exercise its discretion to order specific performance of a contract for the sale of land was to be determined as at the date of judgment. (See **E. Johnson & Co. (Barbados) Ltd. v. N.S.R. Ltd.** [1997] A.C. 400 at 411A). Nothing has occurred over the last two decades that would prevent the completion of the agreement for the sale of the two parcels of land. The parcels remain vested in the Defendant, although their sale was prohibited by an interlocutory injunction. That injunction can be discharged by the Court in order to facilitate the transfer of the two parcels to the Plaintiff. The Defendant by serving the two notices to complete in 2005 and 2006, demonstrated his willingness to transfer the lots to the Plaintiff under the existing terms of the agreement. And this willingness to complete was confirmed after the filing of the Plaintiff's Writ. Another relevant factor is that no steps were ever taken to forfeit the Plaintiff's deposit.

[89] There is one matter that remains to be resolved prior to completion of the contract. It is the outstanding requisition by the Plaintiff for sight of the grant of a right of way by the Vendor to F.F. Manning. The Court is of the view that by filing the Writ asking for specific performance, the Plaintiff waived any concerns about the right of way. In **Balbosa v. Ali** ((1990) 37 WIR 447), Lord Oliver of Aylmerton delivered the opinion of the Privy Council, and observed that:

> "If proof of waiver were needed, it is conclusively furnished by letters calling on the appellant to complete and by the subsequent issue of a writ claiming specific performance.". (page 452 3-d).

Disposal

[90] The Court has determined that in all the circumstances it is just and equitable to grant the Plaintiff an order for specific performance of the agreement for sale dated 15 August, 1987. The Defendant is ordered within 90 days, upon payment made to him by the Plaintiff of the balance of the purchase price, to do all acts and things necessary to convey to the Plaintiff the two parcels of land situate at Enterprise in the parish of Christ Church. The injunction granted by Kentish J. on 10 August, 2006, is hereby discharged in order to facilitate the conveyance of the two parcels of

land to the Plaintiff.

Costs are to be paid by the Defendant to the Plaintiff to be agreed or taxed.

S. A. Richards

SONIA RICHARDS
Judge of the High Court