

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No CV2016-03412**

**CHERYL RAMADHAR** First Claimant

**MIKHAIL RAMADHAR** Second Claimant

AND

**ST. JOSEPH DEVELOPMENT LIMITED**

First Defendant

**NIGEL RAMSARAN**

Second Defendant

**SALLY RAJACK BHAGERATY**

Third Defendant

**LIFE VISION INVESTMENTS LIMITED**

Fourth Defendant

**BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES**

**Appearances:**

For the Claimants: Mr. Kishore Ramadhar

For the First & Second Defendants: Mr. Sheldon Mycoo

For the Third & Fourth Defendants: Mr. Wayne Smart and Ms. Ruth Van Lere

Date of Delivery: Friday 5<sup>th</sup> July, 2019

**JUDGMENT**

- [1] The Claimants' claim against the Defendants is for breach of contract, breach of trust, misrepresentation and knowing receipt of trust property. They claimed the refund of a deposit of three hundred thousand dollars (\$300,000.00) for the purchase of a townhouse at Charles Avenue, Diego Martin from the First Defendant. The Second and Third Defendants at the material time were officers of the First Defendant while the Third Defendant is a director of the Fourth Defendant. The Second Claimant also claimed rent for thirty three months at three thousand dollars a month.
- [2] By a written contract date 7<sup>th</sup> August 2013 between the First and Second Claimants of the one part, and the First Defendant of the other part, the Claimants agreed to purchase and the First Defendant agreed to sell all that that three bedroom townhouse in the Vendor's townhouse Scheme known as Fairview Villas situated at No. 1 Charles Avenue, Diego Martin for the price of one million, five hundred thousand dollars (\$1,500,000.00), the said contract.
- [3] In accordance with the terms of the said Contract, the Claimants paid a deposit of three hundred thousand dollars on the purchase price of the said townhouse. The completion date under the contract was the 31<sup>st</sup> December 2013 and the parties agreed further that the balance of the purchase price would be paid upon delivery of the townhouse.
- [4] The Claimants pleaded that the Third Defendant verbally offered them an option to purchase the townhouse on a rent to own basis over a period of thirty years at an interest rate of five percent as an inducement to enter into the said contract.
- [5] Despite repeated assurances by the Third Defendant that the construction was on schedule, the townhouse was neither built nor delivered by the completion date. In January 2014, the Third Defendant promised to deliver the townhouse by 31<sup>st</sup> January 2014. On the 20<sup>th</sup> January 2014 the Second Defendant sent to the Claimants the written offer of a financing facility over 30 years with an interest rate of 5percent per annum to acquire the said townhouse unit.

- [6] By letter dated 20<sup>th</sup> January 2014 the First Defendant sought a further extension for completion to July 31<sup>st</sup> 2014. The Claimants met with the Second Defendant in February 2014 in order to ascertain the reason for the delay; the Defendant attributed the delay to difficulty in obtaining approvals from WASA. The Claimants averred that the Second Defendant admitted that the First Defendant was in breach of the said contract. The Claimants formed the view that the First, Second and Third Defendants were not acting in good faith and exercised their rights under Clause 15 of the said contract and served a Notice to Complete on the Defendants by letter dated 17<sup>th</sup> February 2014. The Second Defendant responded to this letter indicating that the First Defendant would be unable to complete the townhouse within fourteen days pursuant to the Notice aforesaid and promised to refund the Claimants' deposit within ninety days.
- [7] The First Defendant failed to refund the Claimants' deposit by 30<sup>th</sup> May 2014 - the end of the ninety day period. The Second and Third Defendants repeatedly promised to pay the refund but failed to do so. The First Defendant later transferred its liabilities including its outstanding debt to the Claimants to the Fourth Defendant, Life Vision Investments Limited. The Fourth Defendant made a payment of fifty thousand (\$50,000.00) to the Claimants as partial refund of their deposit.
- [8] The Claimants contend that the conveyance of the townhouse to the Fourth Defendant, constitutes a breach of trust since it was subject to an agreement for sale between the Claimants and First Defendant and is therefore trust property. They asserted that the Fourth Defendant held the townhouse in trust for them as purchasers.
- [9] The Claimants averred that the Fourth Defendant was incorporated by the Third Defendant who was the Secretary and a Director of the First Defendant; they argued that the Fourth Defendant therefore knew that the unit was subject to a trust and knowingly received trust property. They also contended that the Third Defendant was liable for

misrepresentation, deceit and breach of trust as a result of her involvement in these transactions.

### ***Defence of the Third and Fourth Defendants***

- [10] The Defendants denied that they offered the Claimants an inducement to enter the said contract and asserted that the Claimants entered into the said agreement pursuant to an advertisement and not otherwise. The Third Defendant however asserted that while she did assure the Claimants that the townhouse would be constructed on time, she did so in her capacity as an officer of the First Defendant and not in her personal capacity.
- [11] The Third Defendant averred that she resigned as director of the First Defendant on the 8<sup>th</sup> September 2014 and no longer attended the First Defendant's office from that date or conducted any business on its behalf.
- [12] The Third Defendant admitted however, that she did meet with the First Claimant and advised her that the First Defendant was experiencing difficulty in securing the finances necessary to complete the townhouse development and informed the Claimant that the Fourth Defendant intended to complete that development on terms contained in a proposed agreement between the Fourth Defendant and the First Defendant. Pursuant to the terms of the said agreement it was proposed that the Fourth Defendant will pay the Claimant one half of their deposit in the sum of one hundred and fifty thousand dollars (\$150,000.00). The Third and Fourth Defendants averred that the liability of the Fourth Defendant is limited to the terms of the said agreement.
- [13] The Defendants admitted that the Fourth Defendant sent to the First Claimant the letter dated 14<sup>th</sup> June 2016 advising that the Fourth Defendant's liability to the Claimants was limited to the sum of one hundred and fifty thousand dollars (\$150,000.00) which it was prepared to pay in full and final settlement of the refund on their deposit

and amounted to a discharge of the settlement of the refund on their deposit.

[14] The Defendants denied that they engaged in a fraudulent, deceitful or dishonest plan to induce the Claimants to enter into the said agreement or that their conduct amounted to misrepresentation. They asserted that at all material times they acted in good faith to salvage the town house development after the First Defendant encountered financial difficulty.

[15] The Third Defendant denied personal liability and averred that at all material times prior to the 8<sup>th</sup> September 2014, she acted in her capacity as a director of the First Defendant.

### ***Evidence***

[16] The Claimants filed witness statements on their own behalf and were cross examined.

### ***Michael Jonathan Ramadhar***

[17] The Second Claimant acknowledged that he had produced no rent receipts in support of his claim that he had been forced to pay rent for thirty three months as a result of the Defendants' breach of the said contract. He also admitted that he sought to purchase the townhouse:

- (i) After seeing an advertisement for its sale
- (ii) After a visit to the site and liking its location
- (iii) After accepting the financing facility offered by the First Defendant which he could afford

[18] He revealed that his mother told him that the interest rate being offered by the First Defendant was better than that offered by banks; as a result, he accepted the financing facility offered by the First Defendant. He stated that at all times he knew that he was dealing with the First Defendant, a company; he was unaware that the Third Defendant was one of its directors. He was of the view however that the Second Defendant Nigel Ramsaran was in charge and 'the directing mind

behind the company.’ Mr. Ramadhar disclosed that he told the Third Defendant that he was interested in the financing facility offered by the First Defendant. He also stated that he instructed his mother, who was acting on his behalf to reject the Fourth Defendant’s offer of the settlement.

***Cheryl Ann Ramadhar***

- [19] Mrs. Ramadhar testified that she saw the advertisement for the sale of the townhouse and called the number advertised. She spoke to the Third Defendant who gave her the cost of the unit, its completion date, financing arrangements as well as directions to the site. She and the Second Defendant visited the site, liked the location, then met the Third Defendant the next day. Mrs. Ramadhar asserted that she had confidence in the First Defendant since the latter could afford to offer five percent financing while TTMF offered six percent and the banks eight percent. She and her son reviewed the said contract before deciding to purchase.
- [20] The First Claimant acknowledged that the Third defendant was the First Defendant’s representative at all material times and understood that she had entered into the said contract with the First Defendant. Mrs. Ramadhar indicated that Ms. Bhageraty told her that she would have to speak to the Second Defendant when she and the Second Claimant decided to refuse the extension to complete. The First Claimant also admitted that she wrote to the First Defendant demanding a refund of their deposit because she recognized that it was responsible for the refund of the three hundred thousand dollars (\$300, 000.00) that they had paid.
- [21] Mrs. Ramadhar testified further that the Third Defendant informed her that the First Defendant had entered into an agreement with another company to take over the development and that company would pay her and the Second Claimant one hundred and fifty thousand (\$150,000.00) of the refund while the First Defendant would pay the balance of one hundred and fifty thousand dollars (\$150,000.00). Ms.

Ramadhar testified that they refused to accept the one hundred and fifty thousand dollars (\$150,000.00) offered by the Fourth Defendant as full and final settlement of their claim for a refund.

### ***Evidence for the Defendant***

- [22] The defendant relied upon the evidence of the Third Defendant who filed a witness statement and was cross examined.
- [23] Ms. Bhageraty testified that she was employed by the First Defendant to perform office/administrative duties such as answering the phone, and dispensing information about the development. She met clients, answered queries/concerns about the units and the stage of the project. Any questions which she could not answer she forwarded to the Second Defendant and he responded directly to the clients. She revealed that on the request of the Second Defendant she agreed to be a director of the First Defendant but was not involved in any decision making in the company and did not attend meetings held between Mr. Ramsaran and various stakeholders.
- [24] This witness testified further, that upon a prospective purchaser calling about the project, she would invite them to the office to review the site plans, building plans, layout and to receive the brochure. As well, Ms. Bhageraty presented to the prospective buyers related documents such as approvals and proof of ownership. Upon request, she also provided a draft purchase agreement for review; Mr. Ramsaran signed contracts for the sale of the townhouses on behalf of the First Defendant and she witnessed the signatures – this procedure was followed with the Claimants.
- [25] The Third Defendant asserted that the agreement between the First and Fourth Defendants whereby the latter agreed to take over the project was signed on the 28<sup>th</sup> October 2014. She met the First Claimant and advised her of the Fourth Defendant's intention to take over the project and repay the Claimants one hundred and fifty thousand dollars

(\$150,000.00) and that the First Defendant will pay the balance of their deposit in the sum of one hundred and fifty thousand dollars (\$150,000.00).

[26] She asserted that the First Claimant did not object to this proposal. Pursuant to this arrangement, the Fourth Defendant paid that Claimants the sum of fifty thousand dollars (\$50,000) which was accepted and negotiated by the Claimants.

[27] In cross examination the witness disclosed that she incorporated the Fourth Defendant. Her husband is a Director of the company while she is Secretary/Director. Ms. Bhageraty also revealed that she had been appointed a Director of the First Defendant before the Second Defendant.

[28] After her resignation from the First Defendant she communicated with the Claimants. Ms. Bhageraty later admitted that she was still listed as a director on the 11<sup>th</sup> December 2014 despite writing a letter of resignation dated 8<sup>th</sup> September 2014.

[29] The Third Defendant asserted that she agreed with her family to incorporate the Fourth Defendant to take over the debts of the failed First Defendant and repay her brother who had loaned the first Defendant money in August 2014. She accepted that she was part of the decision to sell the First Defendant's property to the Fourth Defendant, although she was aware at the time of the decision that the Claimants had not been paid their deposit. The Third Defendant also disclosed that the Fourth Defendant had no knowledge that the Claimants' property was 'unlawfully conveyed' but she knew that.

[30] This witness insisted that pursuant to the agreement the Claimants were to be refunded their total deposit of three hundred thousand dollars (\$300,000.00) and that the said agreement imposed an obligation on the fourth Defendant to repay depositors. She also admitted that the Claimants' unit was also sold to another person.



[31] Ms. Bhageraty asserted that she was not sure whether the said agreement specified when the Claimants were to be paid and she was unable to ascertain this fact up to present. The cheque for fifty thousand dollars (\$50,000.00) was only sent to the Claimants after receipt of the pre action protocol letter from the Claimants. Even though the letter accompanying the cheque stated that the offer for the Fourth Defendant was not signed by the Claimants, the Third Defendant insisted that the Claimants had accepted the offer.

[32] She also insisted that the Second Defendant had the money to complete the project in January 2014 but did not have the money in August 2014.

### ***Issues***

- a) Is the Third Defendant liable to the Claimants in her personal capacity for the repayment of the deposit or for any of the relief sought by the Claimants.
- b) Is the Fourth Defendant liable to the Claimants for breach of trust or otherwise.

### ***Issue (a)***

[33] The Third Defendant was the Secretary and Director of the First Defendant when the parties entered into the contract for sale. Based on the **Salomon v Salomon** principle<sup>1</sup>, she could not ordinarily be liable in her personal capacity for any wrongs committed by the First Defendant, a registered company and legal person in its own right. The Claimants seek to attach personal liability to the Third Defendant as an exception to the Salomon principle, by alleging that her actions as Director of the First Defendant, and later Director of the Fourth Defendant, amount to misrepresentation, deceit and breach of trust.

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<sup>1</sup> 1897 AC 22

[34] The First Claimant testified that the Third Defendant told her and the Second Claimant that they could obtain financing from a bank or TTMF, but “if we preferred” the First Defendant was prepared to offer them a payment plan – Financing on a rent to own basis at an interest rate of five percent over thirty years. Additionally, the First Claimant testified that after she read the advertisement she and the Second Claimant visited the site and became interested in purchasing the townhouse. The offer of financing by the First Defendant made the purchase even more attractive.

[35] In **Derry v Peek**<sup>2</sup>, Lord Herschell opined:

*“In order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement being fraudulent, there must, I think, always be an honest belief in its truth. And this probably covers the whole ground, for one who knowingly alleges that which is false, has obviously no such honest belief. Thirdly, if fraud be proved, the motive of the person guilty of it is immaterial. It matters not that there was no intention to cheat or injure the person to whom the statement was made.*

*...In my opinion making a false statement through want of care falls far short of, and is a very different thing from, fraud and the same may be said of a false representation honestly believed though on insufficient grounds Indeed Cotton L.J. himself indicated, in the words I have already quoted, that he should not call it fraud. But the whole current of authorities, with which I have so long detained your Lordships, shews to my mind conclusively that fraud is essential to found an action of deceit,*

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<sup>2</sup> [1889] UKHL 1

*and that it cannot be maintained where the acts proved cannot properly be so termed.*

*...But for the reasons I have given I am unable to hold that anything less than fraud will render directors or any other persons liable to action of deceit.”*

[36] The Claimants needed to establish that when the Third Defendant indicated that the First Defendant was willing to provide financing for the purchase of the townhouse at an interest rate of five percent over thirty years that the Third Defendant made that statement knowing it to be untrue, without belief in its truth, or was reckless as to whether it was true. There is no evidence from which this court can find that at the time that the Third Defendant made the offer of financing to the Claimants that the statement was untrue. The Claimants, on whom the burden of proof fell, adduced no evidence of the financial status of the First Defendant at the date of the offer in order to support their contention that the Third Defendant’s statement was false, that she knew it to be false and/or was reckless as to whether it was true or false, and intended that the Claimants should act in reliance on it, and the Claimants did act in reliance on the said statement<sup>3</sup>.

[37] In any event, the evidence before me shows that the Claimants were given the option to seek mortgage financing from a bank, TTMF or the First Defendant. The First Claimant made enquiries of the bank and TTMF and discovered that they were offering slightly higher interest rates of six percent and eight percent. She communicated this information to the Second Claimant who determined that it was advantageous to him financially to pursue the offer made by the Third Defendant on behalf of the First Defendant. I am of the view that this was the reason that the Claimants decided to take up the offer and not

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<sup>3</sup> ECO 3 Capital Ltd and Others v Lutzen Overseas Ltd[2013] EWCA Civ. 413

because of any inducement made by the First Defendant through the Third Defendant.

[38] In **Lawrence v Norreys ors**<sup>4</sup>, it was held that in such a claim, a general averment of fraud is not sufficient. The Statement of Claim must contain precise and full allegations of fact and circumstances, leading to the reasonable inference that the fraud was the cause of deprivation, and excluding other possible causes. Lord Watson held<sup>5</sup>:

*“A plaintiff who desired to avail himself of the provisions of s26 and allege a concealed fraud was not released from the ordinary rule of pleading, applicable to cases of fraud, namely, that general allegations, however strong might be the words in which they were stated, were insufficient to amount to an averment of fraud of which any court ought to take notice. It is not sufficient compliance with the rule to state facts and circumstances which merely implied that the Defendant, or someone for whose action he was responsible, did commit a fraud of some kind. There must be a probable, if not necessary, connection between the fraud averred and the injurious consequences which the plaintiff attributes to it and if that connection is not sufficiently apparent from the particulars stated, it cannot be supplied by general averments. Facts and circumstances must in that case be set forth, and in every genuine claim are capable of being stated, leading to a reasonable inference that the fraud and the injuries complained of stood to each other in the relation of cause and effect.”*

Further, the learned authors of **Bullen & Leake** opine that:

*“In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default or undue influence and in all other cases in which particulars may be necessary beyond such as are*

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<sup>4</sup> Lawrence v Lord Norreys and others. [1890] 15 App Cas

<sup>5</sup> 210 at Page 221

*exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleadings;”*<sup>6</sup>

Lord Selborne L.C. in **Wallingford V Mutual Society**<sup>7</sup> opined “*With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice.*”

[39] Very importantly, the Claimants failed to plead the particulars of misrepresentation, fraud, breach of trust, deceit and knowing receipt of trust property against the Third Defendant.

[40] I therefore hold that the Claimants, having failed to plead particulars of deceit, misrepresentation, breach of trust have not discharged the onus on them to prove on a balance of probability the claims against the Third Defendant based on these grounds.

### **Issue (b)**

[41] The Claimants alleged that the Fourth Defendant knowingly received property, the subject of a trust, when the townhouse was conveyed to it by the First Defendant. They argued that having entered into a contract with the First Defendant for the purchase of the townhouse and paid a twenty percent deposit on same, they acquired an interest in the townhouse and the First Defendant became a trustee of the Claimants’ interest. The Claimants argued that the Third Defendant was aware of their interest when she participated in the decision as Director of the Fourth Defendant to sell the Claimants’ unit to the Fourth Defendant. They also asserted that the Fourth Defendant was liable in that it knowingly received trust property. The Third and Fourth Defendants argued *contra*, that the Claimants, having exercised

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<sup>6</sup> See page 5 of Bullen & Leake’s Precedent of Pleadings with Notes and Rules Relating to Pleadings, Vol.2, Edward Bullen, Stephen Mark et al.

<sup>7</sup> at page 697

their right under Clause 15 of the contract to have their deposit returned, any equitable interest and any trust thereby created was terminated.

In **Jerome v Kelly**<sup>8</sup> Lord Walker stated:

*“It would be wrong to treat an uncompleted contract for the sale of land as equivalent to an immediate irrevocable declaration of trust (or assignment of beneficial interest) in the land. Neither the seller nor the buyer has unqualified beneficial ownership. Beneficial ownership of the land is in a sense split between the seller and the buyer on the provisional assumptions that specific performance is available and that the contract will in due course be completed, if necessary by the court ordering specific performance. In the meantime, the seller is entitled to enjoyment of the land or its rental income. The provisional assumptions may be falsified by events, such as **rescission** of the contract...If the contract proceeds to completion the equitable interest can be viewed as passing to the buyer in stages, as title is made and accepted and as the purchase price is paid in full.”*

[42] In **Kern Corporation Ltd. V Walter Reid Trading Pty Ltd.**<sup>9</sup>

Deane J opined:

*“ It is both inaccurate and misleading to speak of the unpaid vendor under an uncompleted contract as a trustee for the purchaser...the ordinary unpaid vendor of land is not a trustee of the land for the purchaser.*

*In Scott v Southern Pacific Mortgages Ltd.*<sup>10</sup> Lord Collins analysed the nature of the interest acquired by a purchaser on exchange of contracts. He held<sup>11</sup> that the cases characterizing the interest acquired by the purchaser as a trust interest were not dealing with the question whether a contract of sale can have a proprietary effect on parties other than the

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<sup>8</sup> 2004 UKHL 25 Lord Walker at page 32

<sup>9</sup> 1987 163 CLR 164 [HC Aus] at page 192

<sup>10</sup> 2014 UK SC 52

<sup>11</sup> Pages 65-79

*parties to the contract. He cited Lord Cottenham LC in Tasker v Small<sup>12</sup> who said that the rule by which a purchaser becomes in equity the owner of the property sold applies only as between the parties to the contract and cannot be extended so as to affect the interests of others.”*

[43] From the above it is clear that once the contract for the sale of land was terminated, the limited trust created by the execution of the agreement for sale and payment of the deposit came to an end. The Claimants therefore, quite apart from their failure to particularize the breach of trust, cannot maintain such a claim against the Fourth Defendant who purchased the property after the agreement for sale was terminated between the Claimant and First Defendant. Neither the Third nor the Fourth Defendant can be made liable for knowing receipt of trust property or a breach of trust in light of the termination of the contract aforesaid.

[44] It should be noted that had the Claimants opted to waive the First Defendant’s breach of the contract due to the delay in completion, and the contract subsisted, a claim for breach of trust could only have been maintained against the First Defendant. A buyer is not in general entitled to enforce his interest against third parties until he has completed his own title by transfer.<sup>13</sup> The doctrine of trusteeship applies only as between the parties to the contract of sale. In the circumstances, the Claimants’ claim against the Third and Fourth Defendants for breach of trust and knowing receipt of trust property fails.

[45] The Fourth Defendant however, by its agreement with the First Defendant on the 28<sup>th</sup> October 2014, agreed to pay to the Claimants one half of their deposit on the townhouse in the sum of one hundred and fifty thousand dollars (\$150,000.00). Pursuant to this agreement, they paid to the Claimants the sum of fifty thousand dollars (\$50,000.00) by cheque, which the Claimants accepted and negotiated. However, that agreement was between the First and the Fourth

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<sup>12</sup> (1837) 3 My & C 63,70

<sup>13</sup> Halsbury’s Laws of England 5<sup>th</sup> Edition Volume 23 paragraph 191

Defendant to which the Claimants were not made parties. Having held that no trust subsisted at the time of the conveyance of the property, the Claimant cannot properly pursue a claim for the balance of one hundred thousand dollars against the Fourth Defendant in this case.

[46] The First Defendant however, remains liable to the Claimants pursuant to Clause 17 of the Contract for Sale for the balance of the refund and interest thereon at the rate of ten percent from the date of demand until payment. The Claimants also claimed rent at three thousand dollars a month for thirty months, however no rent receipts were annexed in support of this claim. I therefore do not allow a claim under this head. The Claimants however are entitled to damages for breach of contract against the First Defendant.

[47] I therefore Order:

1. Judgement for the Claimants against the First Defendant
2. The First Defendant to pay to the Claimants the refund of the deposit in the sum of three hundred thousand dollars(\$300,000.00)
3. Interest at the rate of ten percent from the 17<sup>th</sup> February 2014 to the date of judgement on the said three hundred thousand dollars (\$300,000.00)
4. The First Defendant to pay to the Claimants damages for breach of contract in the sum of one hundred thousand dollars(\$100,000.00)
5. The First Defendant to pay to the Claimants prescribed costs on the above sums
6. The Claimants' case against the Third and Fourth Defendants is hereby dismissed
7. The Claimants to pay to the Third and Fourth Defendants prescribed costs in the sum of sixty thousand dollars(\$60,000.00)

**Joan Charles**

**Judge**