

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2014-04593**

BETWEEN

CATHERINE OLIVER

Claimant

AND

SELWYN LOVELL

Defendant

AND

MICHELLE DE LEON

**(The Administrator Ad Litem of
The Estate of Joseph Sookdeo)**

1st Defendant to the Counterclaim

AND

THE REGISTRAR GENERAL

2nd Defendant to the Counterclaim

Before the Hon. Madam Justice C. Gobin

Date of Delivery: November 5, 2019

Appearances: -

Mr. Colvin E. Blaize instructed by St. Clair Michael O'Neil for the Claimant

Ms. Zelica Haynes Soo Hon for the Defendant

Mr. Anthony V. Manwah for the 1st Defendant to the Counterclaim

Ms. Reba Granado for the 2nd Defendant to the Counterclaim

JUDGMENT

The claim/two agreements for sale

1. This a priority dispute between Mrs. Catherine Oliver (the Claimant) and Mr. Selwyn Lovell (the Defendant), who both obtained unregistered equitable interests in No. 76 Quesnel Street, Arima. The registered owner of the property is Mr. Joseph Sookdeo (now deceased).

Mr. Sookdeo entered into two successive written agreements for sale of Lot.76 with these two innocent parties.

2. Mrs. Oliver's, the first in time was made more than seventeen (17) years ago on 4th July 2002. The purchase price was \$150,000.00. By the end of July 2003, she had paid about \$46,000.00. She was ready to pay the balance and called upon him to complete the agreement, but Mr. Sookdeo refused to do so. According to her Statement of Case filed in proceedings she eventually filed against Mr. Sookdeo for specific performance, in or about June 2003, a title search disclosed that title to the property was still at that time encumbered with a mortgage in favour of the National Commercial Bank. Mr. Sookdeo refused to secure the release of the mortgage.
3. In the case of Mr. Lovell, his agreement was signed on 1st December 2003 almost sixteen (16) years ago at a significantly higher purchase price of \$250,000.00. His attorney commissioned a title search in March 2004 which disclosed that a caveat had been lodged by one Paul Sookdeo on 30th October 2003. Mr. Sookdeo commenced proceedings against Paul Sookdeo and on 30th June 2004 the removal of that caveat was ordered by a judge. The order was entered some four months later on 1st November 2004.
4. On 4th January 2005, Mr. Lovell and Mr. Sookdeo attended the office of his attorney Mrs. Al Rawi. Mr. Lovell paid the balance of the purchase price and Mr. Sookdeo executed a memorandum of transfer and handed over his Certificate of Title to the attorney. Mr. Lovell was allowed into possession of the property immediately, and he claimed he carried out renovations to the tune of some \$150,000.00 over the next five months or so. Upon the execution, Mr. Lovell then had in his possession, a registrable instrument which his attorney lodged nine (9) days later together with the Certificate of Title for registration at the Registrar General's Office. A written request was made on the same date for the issuance of a new Certificate of Title on the ground that the one which was being lodged was badly torn and unusable.

5. Had Mr. Lovell's instrument been registered that would have been the end of the matter. But that did not happen. Registration was impeded, but significantly not as a result of anything done by Mrs. Oliver. It turns out that three (3) days after Mr. Lovell and Mr. Sookdeo had concluded their transaction and less than one week before the documents were dispatched to the registry, one Kameel Sookdeo lodged a caveat.
6. Given the timeline, a title search updated to the time of execution would have made little practical difference. But the failure to commission one in any case together with the neglect to lodge a caveat immediately upon closing the transaction on 4th January 2005 when the defendant had parted with a significant sum of money, is relevant. This was perhaps an early indication of what I have assessed as a want of diligence, even laxity which would be found in Mr. Lovell's conduct throughout the history of this matter. These features have significantly influenced my decision.

Mrs. Oliver lodges caveat/files HCA 822/05

7. In the meantime Mrs. Oliver had taken legal advice. She had not sat on her rights. Through her attorney, Mr. Blaize, she attempted to file a caveat to protect her interest on 12th January 2005, but there was an error. She eventually succeeded in filing it on 15th April 2005 and just one week later, she filed HCA No. 822 of 2005 against Mr. Sookdeo for specific performance of her agreement for sale. In those proceedings she alleged that at all times since 4th July 2003, she was ready and willing to complete the agreement. Mr. Sookdeo filed a defence to her claim on 18th July 2007. He alleged she had defaulted and repudiated the agreement and that he had forfeited her deposit. What he did not indicate in the defence in that action, was that he had sold the property to Mr. Lovell.
8. The evidence in the case before me established very clearly that Mr. Lovell was aware of that action for specific performance since sometime toward the end of 2006. His new attorney, Mr. Vincent, had by letter dated 20th October 2006 written to Ms. Oliver's attorney. The letter is set out: -

20th October, 2006

Messrs. C.E. Blaize & Co.
Attorneys at Law,
36 Scott Bushe Street
Port of Spain

Dear Sirs

Re: Caveat of Catherine Oliver against Joseph Sookdeo

I act for Mr. Selwyn Lovell who on the 4th January, 2005 purchased the premises situate at 56 Quesnel Street, Arima and more particularly described in the Certificate of Title in Volume 2017 Folio 447 from Joseph Sookdeo, the registered proprietor for the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00). He has discovered that your client, Ms. Catherine Oliver on the 15th April 2005 lodged a caveat against any dealings with the said premises by the said Joseph Sookdeo thereby preventing him from registering his memorandum of transfer.

I note that the lodging of your client's caveat is based on an agreement for sale made on the 4th July, 2002 for the sale of said premises by Joseph Sookdeo for her I shall be pleased to know whether or not your client has taken any action against the said Joseph Sookdeo to enforce the said agreement.

An early response from you will be greatly appreciated.

Yours faithfully,

Simon D. Vincent
Attorney at Law

9. In a terse response dated the same day, Mr. Blaize advised that Mrs. Oliver had filed HCA No.822 of 2005 against Mr. Sookdeo. In his evidence Mr. Lovell claimed not to have been aware of this correspondence, but I do not believe him. From the evidence it seems that surprisingly, no more was heard on the matter until April 2007 when Mr. Lovell visited her attorney and offered the sum of \$40,000.00 to settle the Claimants specific performance claim. The offer was not accepted.
10. Mr. Lovell took no step to intervene in the proceedings before Justice Moosai. He chose instead, while those proceedings were pending to file an action against Mrs. Oliver seeking the removal of her caveat. That action CV 2007-02031 was listed for hearing on 14th

November 2007, on which date neither Mr. Lovell nor his attorney appeared. Pemberton J dismissed the action. Mr. Lovell subsequently became aware of the dismissal. No application was made to set it aside or to appeal it. He did not attempt to refile his application.

11. On 15th January 2009 at the trial of the Mrs. Oliver's action for specific performance Moosai J, ordered specific performance of the Oliver agreement for sale. He further ordered Mr. Sookdeo to deliver vacant possession. The order provided for the execution of the instrument of transfer by the Registrar in default of Mr. Sookdeo's voluntarily executing same. Following the determination, Mr. Lovell was formally informed of the order of Moosai J by letter dated 9th March 2009 from Counsel for Mrs. Oliver. On 20th March 2009 and only after he was called upon by Mr. Sookdeo's attorney to deliver vacant possession, Mr. Lovell lodged a caveat to protect his interest. Five years had been allowed to elapse since he had procured his registrable instrument.

12. It is important here to indicate some troubling matters concerning Mr. Lovell's instrument of transfer since they are relevant to my assessment of conduct. The original documents were not produced during the proceedings. On the evidence of Mrs. Al Rawi (which was not challenged), they were lodged for registration just over a week after execution. Routine checks would have disclosed that the documents never made it on to the register.

13. The impression one is left with, is that the documents were lodged on 13th January 2005, remained with no questions asked, until they were returned to the attorney by the Registrar General on 27th June 2005 because of the caveat which had lodged by Kameel Sookdeo. Mr. Lovell himself did nothing to secure the removal of Mr. Sookdeo's caveat. The Defendant could have availed himself of the provisions of S.126 of the RPA which permits not only the registered proprietor, but any person claiming under any transfer or other instrument signed by the proprietor to compel the caveator to show cause. It seems, however that Mr. Lovell was content to leave the matter in the hands of Mr. Joseph Sookdeo. Given that Mr. Sookdeo's questionable conduct is what had led to his predicament, I would have expected

him to assume control of the situation. Mr. Kameel Sookdeo's caveat was eventually withdrawn on 7th March 2007, more than two years after it had been filed.

14. Some three months after the caveat was withdrawn, Mr. Lovell's documents were resent by his attorney on 9th May 2007 to the Registrar General. Mrs. Al Rawi produced a copy of the cover of the letter in which the documents were enclosed. The Registrar General in subsequent correspondence claimed to have no record of having received the documents. At the trial of this action the Defendant led no evidence as to any investigations, or attempts to locate these important documents, even when they were critical to Mr. Lovell's case. They have disappeared and I have concluded that Mr. Lovell demonstrated an inappropriate lack of concern.

15. On 12th January 2010 pursuant to the order of Moosai J, which had been made on 15th January 2009 in the specific performance action, a memorandum of transfer from Joseph Sookdeo to Mrs. Oliver was executed by the Registrar of the Supreme Court. This was done while Mr. Lovell's caveat which was lodged the 9th March 2009 was still pending. A new Certificate of Title was subsequently issued to Mrs. Oliver. The Registrar had clearly erred in law in issuing the Certificate to Mrs. Oliver. At an early stage in the proceedings Mr. Lovell joined the Registrar General and sought certain reliefs including cancellation of that Certificate of Title.

16. The Registrar's legal representatives at all times acknowledged the error and in the course of case management it was rectified. The following order was made by consent of the parties on 30th October 2017 :-

(a) The Registrar General do forthwith cancel the registration of Memorandum of Transfer dated the 12th January, 2010 registered as Memorandum of Transfer No.47 in Volume 5612 Folio 307;

(b) The Registrar General do forthwith cancel Certificate of Title in volume 5642 Folio 159 in the name of Catherine Oliver;

(c) The Registrar General do forthwith reinstate Certificate of Title in Volume 2107 Folio 447 in the name of Joseph Sookdeo; or issue a new Certificate of Title in the name of Joseph Sookdeo.

17. As things now stand and some 17 years after he entered into the Oliver agreement and after all of the intervening events, Mr. Joseph Sookdeo (now deceased) by virtue of the above remains the registered proprietor/owner on a Certificate of Title with two endorsements of Mrs. Oliver's caveat lodged 9th April 2005 and Mr. Lovell's lodged 20th March 2009.
18. As I stated before, Mr. Lovell was allowed into and has remained in possession of Quesnel Street since 4th January 2005. He claims to have spent the sum of \$150,000.00 on renovations during the period January 2005 and June 2005. This was to prepare the premises for the rental market. He has been earning rent since May 2005, first in the sum of \$2400.00 per month and lately \$4000.00 per month.
19. Mr. Lovell claims that Mrs. Oliver was fixed with actual and constructive notice of his interest. She lived in the vicinity and would have been able to observe the renovation works. I accept that works were in fact done and as Ms. Oliver says, when she passed along a certain route in a maxi taxi which allowed her to see the back of the premises from a distance, she would have observed some works to the fence, the erection of a small wall and the replacement of old galvanise with new. She admits she never visited anyone at the premises to make any enquiry as to how the occupiers came to be carrying out the works.
20. On the renovations, the Defendant called a witness his contractor Rasheed Mohammed who confirmed that most of the works were carried out internally. The estimates of costs which were produced in evidence were done up by Mr. Lovell. I considered the evidence to be less than independent and the sums for labour and materials to be inflated.

The Law

21. It is trite that the general rule is as the Latin phrase says “Qui prior est tempore potior est iure” which translates “first in time is strongest in law.” The order of creation prima facie determines priority unless there is some difference in the equities of the parties which may provide a ground for postponing the interest of the holder of the first in time.
22. The task of the Court is to determine if the equities are equal, or if not which party has the better equity. It involves an examination of the whole of the conduct of both parties and the nature of their interest in the subject property. It has been said that Courts apply broad principles of right and justice to determine which is the better equity (**Rice v. Rice [1853] 2 Drew 73, 23 LJ Ch 289**). I do not consider in my assessment that I am limited to matters predating the creation or lodgement of caveats. I believe I am entitled to look at conduct that I consider relevant throughout, until the time of determination of the issue.
23. Australian authorities, some of which are almost one hundred years old have been cited in our jurisdiction on this issue. In **Barclays Bank DCO v. Admin General for JCA for the Court of Appeal, [1973] 20 W.I.R. 344 at p. 348 Fox JA** considered the loci classici. The general principles, are extracted and succinctly listed as follows: -
- (i) Priority afforded by time to an equitable interest is not lost unless there is a failure to lodge a caveat;
 - (ii) An omission to caveat will not of itself necessarily warrant postponement of a prior equitable interest;
 - (iii) Postponement occurs only if by his act or omission the holder of the prior equitable interest has contributed to a belief in the holder of the subsequent equitable interest when he acquired his interest that no outstanding equitable interests were in existence;
 - (iv) The acts or omissions of the prior holder must also have either directly misled the holder of the later equitable interest or must have amounted to an arming of a third person with powers to go out into

the world under false colours and thereby to be able to be misled or to deceive the subsequent holder;

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

24. The starting point of the application of the law to the facts is that Mrs. Oliver's interest was created first in time and all equities being equal, it should rank for precedence over Mr. Lovell's. Before proceeding to examine whether the equities are in fact equal, it is important to put paid to the argument that Mr. Lovell's equity is better because he got to the stage of having his memorandum of transfer executed, after having paid the balance of the purchase price. As I understand it the argument is that by reason of this, he has a stronger claim to place himself on the register as opposed to Mrs. Oliver who had not paid the purchase price and has no executed transfer.

25. I reject the argument and rely on the guidance contained in the passage below of **Dixon J in Lapin v. Abigail 44 CLR 188 p. 206.**

"It may, however, be suggested that, if Abigail obtained a registrable instrument together with the Certificate of Title, his equity is to be preferred upon the ground that he had an immediate and a better right to Law for the legal state (In the first place it is not proved satisfactorily or perhaps at all, that Abigail did obtain the Certificate of Title at the time of his advance or any time before he got notice of the appellant's rights.) But in any case the equitable doctrine by which he who has a better right to the legal estate obtains priority is not applicable in a registration system in which no legal interest can be until registration. The supposed better right to legal estate consists simply in the ability of the party claiming and to secure priority for a statutory security, if he chose to do so by registration." **[Emphasis added].**

In the circumstances, I do not believe that on its own, the fact of settlement puts Mr. Lovell at an advantage.

26. Further I think it relevant to remind that in this jurisdiction there is no equivalent of S.43 (a) of the RP Act in New South Wales in respect of which Mr. Balmaan says: -

“the purpose of which is bringing in to play the period between settlement and ultimate registration of a purchaser for value of the legal estate without prior notice of equitable interests in land in S.41 otherwise”.

(Torrens Title – 2nd Edition p.208)

27. Our Court of Appeal considered the issue of protection between settlement and registration in the matter of **Baby Khan v. Farouk Khan, Balkissoon Balgobin and the Royal Bank of Trinidad and Tobago, CA Civ. 101/1997**. Hamel-Smith JA faced with a situation in which a caveat was lodged by the Appellant mere days before settlement by the Balgobin’s (innocent parties), considered the effect of S 141 of the Act and the effect of filing a caveat between settlement and registration. The learned Justice of Appeal indicated on the facts that the question did not arise for determination however the court referred to the well established effect of the section: -

“The section on a first reading, appears to protect a purchaser from the inception of his dealings with the registered proprietor. The Courts in Australia, however, have consistently held that the (equivalent) section applied on registration only and not before.”

“The author in Baalman makes a further observation. He notes that the decision in **Abigail** did not involve a consideration of the terms of section 43A of the Real Property Act, (that section not having been enacted at the relevant time). Under that section Abigail would have been entitled to the protection of the bona fide purchaser of the legal estate for value without notice doctrine, quite apart from considerations involving the indicia of title and the lodgement of caveats. According to the author, section 43A was undoubtedly inserted to afford a transferee, during the interim period between the transferee paying his money and receiving a registrable dealing and achieving the status of a registered proprietor, to afford him a measure of protection which he did not otherwise have.”

“Except for the decision in Abigail, the weight of authority leans in favour of construing section 43 (the equivalent of section 141) as being applicable on registration only. In Baalman (the Torrens System) in the footnote to section 43, the author states that (p.200):

“Read literally, the section would appear to offer protection to any person dealing with the registered proprietor from the moment of commencement of negotiations but, as will be seen, Courts have consistently adopted the view that the protection of the section is only available after registration.”

The arguments of Counsel for the Defendant in support of postponement of Mrs. Oliver’s interest

The allegation of fraud

28. Counsel submitted that in assessing the conduct of the parties I should consider that Mrs. Oliver obtained the order of Moosai J for specific performance of her agreement for sale against the vendor Mr. Sookdeo by fraud and that the Judgment should be set aside for that reason. The particulars of fraud alleged are as follows: -

- (c) In April 2007, the Claimant’s attorney in those proceedings was informed of Mr. Lovell’s interest personally;
- (d) In proceedings CV 2007-02031 which Mr. Lovell filed against Ms. Oliver for removal of her caveat, the Claimant was informed of the Defendant’s interest in the subject property;
- (e) The Claimant was aware that the duplicate Certificate of Title had been delivered to the Defendant by the registered proprietor.

29. I find these arguments to be without merit and reject them for the following reasons. First, Mr. Lovell has no locus to seek to set aside the Judgment of Moosai J on the basis of fraud. He was not a party to the proceedings. Mrs. Oliver brought a claim for specific performance against Mr. Sookdeo. She sought a remedy in personam. The Judge’s Order was

not appealed. On the contrary, Mr. Sookdeo attempted to secure compliance by calling upon Mr. Lovell for vacant possession to satisfy the judgment. There is no evidence that Mrs. Oliver became aware that Mr. Sookdeo had delivered the Certificate of Title to Mr. Lovell, during the course of the trial. Mr. Vincent's letter to Mr. Blaize did not disclose this, and it never arose in Mr. Sookdeo's case.

30. In any case such knowledge, even if she had any at the date of her trial is insufficient and irrelevant to an alleged claim of fraudulent conduct of her case against Mr. Sookdeo. The registered proprietor was Mr. Joseph Sookdeo. There was nothing to stop the judge ordering specific performance even if Mr. Lovell had been handed the Certificate of Title. There was no reason to suggest that Moosai J would be acting in vain in granting relief.

31. The submission is rendered more untenable, as the very particulars relied upon by the Defendant, which he confirmed in his evidence, establish firmly that he was aware of the proceedings and took no steps to join in them to avail himself of the appropriate legal remedies. He could have made an application to join to protect his interest and to persuade the Judge not to grant the discretionary relief which the Claimant was seeking. He could have indicated the hardship that would result if the judge proceeded to judgment without hearing him. He could have brought to the judge's attention the fact that he had paid significant money and that he had expended money on renovations and had been in possession. A court considering the grant of the equitable remedy of specific performance was well placed to hear him. But he did not intervene. He chose deliberately (I conclude), to wait it out and this has not assisted him in the end. This was simply not right.

Questions about Mrs. Oliver readiness and willingness to complete the agreement by July 2003.

32. Counsel for the Defendant attempted in cross examination to introduce the issue of Mrs Oliver's readiness and ability to complete the agreement. The Claimant was asked why she did not pay for the preparation of the release of the NCB mortgage when she was told the legal

fees would be a mere \$700.00. The short point on this aspect of the Defendant's case is that Moosai J determined the issue as to Mrs. Oliver's readiness and willingness to complete the agreement by July 2003. In ordering specific performance he clearly accepted her case and rejected Mr. Sookdeo's that she was in default and had repudiated the contract. That judgment stands. In the circumstances, it is not open to this Court to revisit that issue.

Constructive Notice of Defendant's Interest

33. The issue of constructive notice of Mr. Lovell's interest through his open occupation and obvious renovation works was raised in relation to the claim of alleged fraud by the Claimant in pursuing her claim for specific performance. If it was to bolster the case on fraud by reason of her failure to join Mr. Lovell in the Moosai J proceedings, the reasons above for rejecting this submission, apply.

34. If the argument is that the open acts of possession by Mr. Lovell should have alerted Mrs. Oliver to his interest or put her on enquiries as to his rights, I reject it first because the effect of S. 141 of the Real Property Act is clear. Mrs. Oliver was at all times entitled to deal with Mr. Sookdeo on the face of the register. There is nothing to suggest that prior to receipt of Mr. Vincent's letter dated 20th October 2006, there was any claim to any interest. There was nothing on the register, no caveat had been lodged and Mrs. Oliver had her caveat in place. Indeed the memorandum of transfer and the old Certificate of Title were nowhere to be found. The Registrar did not and still does not have them. I do not believe however that Mrs. Oliver was under any duty to make enquiries as to whether the property had changed hands because of her observations. As a matter of law, she could not be said to have been fixed with notice of Mr. Lovell's equitable interest because of this.

The failure to lodge a Caveat

35. The Defendant claimed that the failure of the Claimant to promptly lodge a caveat between the time of the creation of her equitable interest in December 2002 and the execution of Mr. Lovell's memorandum of transfer and settlement, is conduct which should

result in postponement of her priority. This, of the several submissions of the Defendant's Counsel requires the most serious consideration.

36. The authorities speak with one voice that the omission to file a caveat will not of itself necessarily warrant postponement of a prior equitable interest. In other words there is no automatic postponement. After reviewing the authorities on this matter, the learned Author Balmaan summarized the position:-

“Failure to lodge a caveat is not of itself an act or default on the part of a prior equitable owner as to make it inequitable as between him on a subsequent equitable owner that he should retain his initial priority (Balmaan p. 308) (The Torrens System on NSW – 2nd Edition).”

37. The Judgment of Fox JA referred to above (paragraph 23) provides further guidance. It is only therefore sensible to consider the effect of Mrs. Oliver's failure to lodge the caveat prior to 4th January 2005, on the equality of the parties' respective equities, by looking at it in all of the circumstances. Singling it out for the purpose of the exercise would not be productive. But it has to be noted that in the circumstances of the rejection of the submissions on fraud and the reliance on constructive notice of Mr. Lovell's interest, it does seem as if it is the sole ground for an argument for impeachment of the precedence of Mrs. Oliver's equity.

38. I have examined her conduct, her actions and/or missteps to determine whether any of her acts or omissions establish a causal connection to the creation of Mr. Lovell's subsequent equity and I have found nothing. It is true she did not immediately lodge a caveat but there is no strict legal requirement to lodge a caveat to protect an unregistrable interest. The RPA does not require the mandatory lodgement of a caveat. The terms of S.125 of the Act are clear. The purpose of the caveat remains to protect the interest of the caveator. No doubt lodgement serves to provide notice to someone searching the register, but that is incidental.

39. Further there is no evidence of common conveyancing practice to lodge a caveat mechanically upon entering into an agreement for sale. The fact that Mr. Lovell himself did not do so until 2009 bears this out. There is no basis on which I feel able to take judicial notice of an established practice of lodging caveats by persons in Mrs. Oliver's position. The fact that Mr. Sookdeo remained in possession of this Certificate of Title and with the ability to use it in the later transaction indicates no fault on her part. Mrs. Oliver had no entitlement to possession of Mr. Sookdeo's Certificate of Title before completion. There is no conduct on her part which "armed" Mr. Sookdeo with the ability to give over the Certificate of Title to Mr. Lovell. She could not demand it and absent any power on her part to do so, Mr. Sookdeo could always present it to a subsequent purchaser, which he did.

40. The lodgement of a caveat was not the only way that was available for Mrs. Oliver to protect her interest but she did subsequently lodge one in contemplation of her High Court Action for specific performance. Of great significance to my assessment of her conduct is that she did indeed file the action. This, I find, was well before she was aware of Mr. Lovell's unprotected claim. She acted responsibly by seeking redress before the Court. She prosecuted her case. She attended Court when Mr. Lovell filed his own proceedings against her to show cause why her caveat should be removed. Neither he nor his lawyer showed up and his case was dismissed.

41. I have placed considerable weight on Mr. Lovell's conduct in relation to the previous court proceedings. I believe he first found out about the proceedings before Moosai J toward the end of 2006. The correspondence exchanged between the lawyers confirms this. At that stage Mr. Sookdeo had not yet filed a defence. Mr. Lovell's conduct in standing by, neglecting and or failing to join or participate in the proceedings, was simply not justifiable. Had he intervened the judge at that stage may have viewed things and the relevant time lines in a completely different way. Instead as I have indicated, I believe he chose deliberately to do nothing and to frustrate the judicial process of which Mrs. Oliver had availed herself. He could only have intended to deprive her of the fruits of a judgment she had awaited for almost four

years. His conduct in relation to the proceedings he filed against Mrs. Oliver too, once again demonstrated a characteristic lack of due diligence and laxity. He allowed them to go by default.

42. It is of significance that it is only after he was formally notified of the effect of the Moosai J order and of the demand for vacant possession by Mr. Sookdeo that he filed his caveat on 20th March 2009. This was more than five years after creation of his equitable interest and more than 4 years after he had had his registrable instrument in hand. In part, this conduct has led to the further delay in the final determination of Mrs. Oliver's claims in these and other proceedings. This is long overdue.

43. I do not think in the circumstances Mr. Lovell can claim the better equity. The significant delay in resolving the central issue in this case lies for the most part squarely at Mr. Lovell's feet. I have factored this into my general assessment of what is ultimately right and just. I am not persuaded that the filing of his own caveat in March 2009, given the record of his conduct, could in any sense revive any claim to postponement he may have had, had he acted with greater diligence. In answer to the Court on whether he was aware he was taking a risk by not lodging a caveat, for all those years, and spending money on the property, Mr. Lovell indicated he was aware but "in life you have to take a risk sometime". This answer has not assisted him. He took the risk and he must bear the unfortunate consequences.

Reliefs

44. Having considered the evidence, the submissions and the law I found that the Claimant was entitled to judgment and that her rank for precedence should not be postponed. The Claimant has failed to prove the quantum of mesne profits alleged. In assessing her claim I shall however take into account the fact that the Defendant himself has provided evidence of monthly rent at least \$2500.00 / \$4000.00 per month. I shall use the lesser sum as the basis for assessing mesne profits since there is no evidence as to when the rent was increased. I

believe it is fair to have this order take effect from the date of the order of Moosaj J, 15th January 2009, to 31st January 2020 or delivery of possession if it is earlier.

45. I have considered that the effective date should run from that date to take into account the fact that, Mr. Lovell did expend moneys on the property and that Mrs. Oliver is going to benefit from the improvements he would have made.

46. I was first minded to make an order that the Defendant is to pay the costs of the action on the prescribed scale. The Claimant having failed to prove the quantum of mesne profits claimed, however I think the appropriate order is for no order as to costs.

Disposition

1. Judgment for the Claimant.
2. The Claimant is to prepare a memorandum of transfer to give effect to the order of Moosai J, dated 15th January 2009 and the instrument is to be executed by the Registrar of the Supreme Court.
3. The Registrar General, upon issuing a new Certificate of Title in compliance with the order of this Court made on 30th October 2017 is to register the said memorandum of transfer and to endorse a memorial of the transfer from Joseph Sookdeo to the Claimant, Catherine Oliver.
4. The Caveats lodged by the Claimant on 15th May 2005 and the Defendant on 9th March 2009 herein are to be removed to allow for the registration of the memorandum of transfer.
5. The Defendant is to deliver vacant possession of the property situate at No.76 Quesnel Street, on or before 31st January 2020.

6. The Defendant is to pay mesne profits calculated at the rate of \$2500.00 per annum from 1st February 2010 to 1st February 2020 together with interest thereon at the rate of 3% per annum.

7. There shall be no order as to costs.

Carol Gobin

Judge