THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV 2016-03013

BETWEEN

ANGELLA JEETA SINGH

Claimant

AND

RAMJATTAN LALLIE

1st Defendant

RAMAKANTH PARRAY

2nd Defendant

Before the Honourable Mr Justice Frank Seepersad

Appearances

1. Ms Hadad instructed by Ms Narinesingh for the Claimant.
2. Ms Nanan for the 1st Defendant.
3. Mr Ashraph instructed by Mr Gosine for the 2nd Defendant.

Date of Delivery: 22nd May, 2018

DECISION

Overview

1. Before the Court for its determination is the Claimant's claim by virtue of which the following reliefs were sought:

    i. Specific performance of the Agreement for Sale dated 30th June, 2014 and made between the Claimant and the 1st Defendant.
    ii. A Declaration that the beneficial interest in the plot #60 situate at Reform Village passed to the Claimant on the execution of the Agreement dated 30th June, 2014.
    iii. A Declaration that this agreement ranks in priority to the agreement made between the 1st and 2nd Defendants.
    iv. An order consequential to the order for specific performance for delivery of possession of plot #60.
    v. All necessary and consequential accounts, directions and inquiries;
    vi. As against the 1st Defendant, damages for breach of contract in lieu of or in addition to specific performance.
    vii. Interest.

2. The 2nd Defendant also filed a counterclaim and prayed for the following reliefs:

    i. A Declaration that the 2nd Defendant's Agreement for Sale is first in time and as at the 13th January, 2014, the beneficial interest in the said lands passes to the 2nd Defendant, which was part performed as per the agreement between the 1st and 2nd Defendant.
    ii. A Declaration that the 2nd Defendant has been in possession of the lands since January, 2014.
    iii. Interest.
    iv. Costs.

The Claimant's Case

3. The Claimant asserted that the 1st Defendant approached her with a verbal proposal for the sale of the land in June, 2014 for $150,000.00 as he had acquired an interest in the land through the Voluntary Separation of Employment Package (VSEP) offered to him as a former worker of Caroni 1975 Limited.

4. The 1st Defendant negotiated the price of the land with the Claimant and the parties eventually settled on $80,000.00 as the purchase price. They also agreed that a deposit of $10,000.00 would be made and that the balance would be paid in two instalments thereafter. The Claimant prepared an Agreement for Sale but this document was not executed.

5. Subsequently, the 1st Defendant requested that the Claimant pay a $20,000.00 deposit and proposed that the balance should be paid in one lump sum and the Claimant orally agreed to this change.

6. The Claimant thereafter met with the 1st Defendant on 30th June, 2014 and the parties executed the agreement for sale in the following terms:
    i. Ramjattan Lallie would sell and Angella Jeeta Singh would buy the residue of the unexpired period of the lease in the said lands for and at the sum of $80,000.00;
    ii. Angella Jeeta Singh would pay a deposit of $20,000.0 in cash towards the purchase price;
    iii. Angella Jeeta Singh would pay the remaining purchase price of $60,000.00 upon completion;
    iv. The sale would be completed within four months of the execution of the Agreement for Sale;
    v. Ramjattan Lallie would be responsible for obtaining the written consent of the lessor to the assignment of the Lease as a condition precedent to the completion of the sale;
    vi. Ramjattan Lallie was required to present the relevant title documents to Angella Jeeta Singh within 8 days of the execution of the Agreement for Sale.

7. The Claimant tendered the deposit of $20,000.00 to the 1st Defendant and he in turn issued a receipt. The Claimant then asked the 1st Defendant to produce a certified copy of the Lease and he stated that he could not provide it since he did not have it at that time.

8. One month later, the 1st Defendant approached the Claimant for a further deposit of $20,000.00 which she paid. Subsequently, the 1st Defendant told the Claimant that he would need to increase the purchase price by $10,000.00 and she also agreed.

9. In September, 2014 the Claimant discovered that the Deed of Lease in relation to the 1st Defendant's land was prepared, executed and collected by him. This led the Claimant to enquire as to whether or not he obtained permission to assign the said lands. The 1st Defendant's response was that he was informed by Caroni 1975 Limited that the lands were designated for a building project for the Water and Sewerage Authority (WASA) and as such, Caroni would reissue him another parcel. This the Claimant found to be untrue following her inquiries about same.

10. The Claimant through her attorney then proceeded to issue a pre-action protocol letter in respect of their agreement. The 1st Defendant assured her that he was going to sign the Lease when he got the paper work in order. Between March and April, 2016 the Claimant attempted to settle the matter but the 1st Defendant was evasive. Within that time the 1st Defendant's wife contacted the Claimant in respect of issuing her a refund which she rejected.

11. In May, 2016 the Claimant observed that the lands had been ploughed and cleared. She immediately contacted the Commissioner of State Lands who told her that permission was sought and granted to assign the Lease to an unnamed third party. The 1st Defendant failed and/or refused to complete the transaction and proceedings were instituted.

12. On the 16th September, 2016 the Claimant lodged *lis pendens* in relation to the lands and registered same on 2nd December, 2016. The 1st Defendant filed its Defence on 3rd

November, 2016. Three days later a deed was prepared purporting to convey his interest in the land unto the 2nd Defendant.

The Defendants' Case

The 1st Defendant

13. The 1st Defendant stated that he was entitled to the parcel of land in accordance with his VSEP package and that he was desirous of selling it for $150,000.00. He said he agreed to sell the land to the Claimant for $90,000.00 but that he never sought a deposit from her nor were there any formalised arrangements regarding her payment for the land. Further, he denied that he ever received, saw or executed any Agreement for Sale from the Claimant.

14. He accepted that he subsequently collected a total of $40,000.00 from the Claimant towards the purchase price and that his wife had attempted to refund the sum to the Claimant.

15. With respect to the execution of the Deed of Lease in light of the issuance of proceedings, the 1st Defendant stated that the 2nd Defendant called him to accompany him to his attorney's office so as to execute a Deed on 6th November, 2016. He stated that this was done as a formality since the 2nd Defendant had paid sums toward the purchase price of the land.

The 2nd Defendant

16. The 2nd Defendant averred that he entered into an agreement for sale of the land with the 1st Defendant and paid him $5,000.00 in January, 2014 prior to the signing of any agreement between the Claimant and the 1st Defendant. He stated that in February, 2014 he instructed his employees to cut and burn the land in preparation for cultivation and thereafter cultivated pumpkins and plantains, the former having been harvested and sold and the latter were not mature for harvesting.

17. He also stated that a formal agreement was not drawn up until the 1st Defendant obtained the requisite approvals from the Commissioner of State Lands.
18. In July, 2014 the 1st Defendant requested further payment and the 2nd Defendant agreed. Thereafter the parties formalised a contract and the 2nd Defendant advanced the further sum of $45,000.00. A Power of Attorney was also executed in favour of the 2nd Defendant.

19. The 2nd Defendant claimed that he also paid the 1st Defendant a further sum of $50,000.00 on 10th October, 2014 toward the purchase price.

Assessment of the Evidence

The evidence adduced in support of the Claimant's case

20. The Claimant and her son testified and they appeared to be forthright and sincere. They were generally consistent in their evidence save that the Claimant said in her witness statement that the Agreement for Sale executed by the 1st Defendant on or about 30th June, 2014 was prepared by her but under cross examination she said that her son downloaded the agreement for sale in her presence.

21. The matters in dispute based on the Claimant's evidence surround the following issues:

    a. Whether the 1st Defendant signed the Agreement for Sale dated 30th June, 2014, (the June equity).
    b. Whether the Claimant visited the land in June/July, 2014.
    c. Whether there were visible signs that someone was in possession of the land as at June/July 2014.
    d. Whether the Claimant regularly visited the land after June/July 2014.

22. For reasons which would be outlined later in this judgment when the Court deals with the 1st Defendant's evidence, the Court rejected the 1st Defendant's evidence and found him to be a witness who lacked candour. The Court accepted the Claimant's evidence which was corroborated by her son Vijay and found as a fact that the 1st Defendant did execute a written Agreement for Sale on the 30th June, 2014.

23. The Court noted that the Claimant never expressly pleaded in her re-amended statement of case that she had visited the land in June 2014 and save for the pleading that she drove past the land on the 15th May 2016, she made no specific reference to actual occasions when she went to the land. At paragraph 3 of her Reply to the 1st Defendant's Defence, she denied that the 2nd Defendant went into in possession of the land since January 2014 and she pleaded at paragraph 2 that she made regular visits to the land and never observed signs of occupation until 15th May, 2016.

24. In her witness statement at paragraph 6, the Claimant said she visited the land with the 1st Defendant in June 2014 and he pointed out the boundaries of the land to her. At paragraph 9, the witness said that she and her son Vijay went back to the land with the 1st Defendant for a second time during June 2014 and then on the 24th July, 2014 she again visited the land with a contractor with a view of clearing same but stated that she needed to have the boundaries of the land identified. The Claimant in cross examination indicated that she did not verify the land by way of referral to the plan which accompanied the Lease, but she did take photographs of the land in May 2016.

25. In cross examination the 2nd Defendant was shown the said photographs and indicated that the photographs depicted the land that was the subject of this matter. While the Court felt that the visits to the land during the months of June and July ought to have been pleaded, the Court was impressed by the evidence of the Claimant, her son Vijay and witness Frank Koomalsingh and found as a fact that the Claimant did visit the land in June/July 2014 and that there were no visible signs of cultivation or possession during these times.

26. The Court however found that the Claimant's evidence as to the "regular" visits was vague and on a balance of probabilities found that it was unlikely that the Claimant, given the location of the land, would have regularly visited same and therefore found as a fact that the Claimant could not establish when, after July 2014, the land was cultivated or when the 2nd Defendant took possession of same. The Court's finding on this issue was

fortified when the Court considered and analysed the 2nd Defendant's evidence, (as appears later in this judgment).

The 1st Defendant's evidence

27. The 1st Defendant during cross examination said several things which never formed part of his witness statement or his Defence. He accepted in cross examination that he received a deposit from the 2nd Defendant in January, 2014 but he never made any previous reference to same prior to his cross examination. He also indicated that he had shown the Claimant his father's land as opposed to Lot 60 and that he did not think he did anything wrong by taking money from both the Claimant and the 2nd Defendant, as he was of the view that whoever paid first would get the land and the other would be refunded. The Court felt that the 1st Defendant's primary objective was to get the best price and he was prepared to make misrepresentations so as to protect his interest. His demeanour engendered in the Court a sense of disquiet and the Court formed the unshakable view that he was a witness upon whose testimony the Court could not rely. Accordingly, the Court did not consider his evidence in its resolution of the facts.

The 2nd Defendant's evidence

28. The 2nd Defendant did not engender in the Court a feeling that he was a dishonest witness or that he was being deliberately evasive. The Court formed the view that he was a simple man who did well in business, but he seemed to rely heavily on his lawyer for advice and guidance and did not properly understand the nature of the legal paper work that he executed nor did he question his Attorney as to the need to execute certain documents. The Court had to consider his evidence to determine the following issues:

    e. Whether he paid $5,000.00 to the 1st Defendant on the 13th January, 2014 and received the receipt which was annexed to his witness statement at paragraph 7 (the January equity).

    f. The date or time at which he took possession of the said land.

g. Whether the 2nd Defendant paid the sum of $45,000.000 to the 1st Defendant on the 28th July, 2014 or whether the sum of $50,000.00 was paid (the July equity).

h. Whether the 2nd Defendant paid a further sum of $50,000 to the 1st Defendant in October, 2014 by cheque and received a receipt.

i. Whether the lease dated 6th November, 2016 was the product of a conspiracy as between the Defendants so as to frustrate and obstruct the instant proceedings.

29. The Claimant did not premise her defence to the 2nd Defendant's counterclaim on fraud and was unable to adduce any evidence to contradict the 2nd Defendant's assertion as to the payment on the 13th January, 2014. The Court considered the 2nd Defendant's evidence on this issue and found same to be credible and probable. The 2nd Defendant said that the 1st Defendant had contacted him in December, 2013 and offered to sell the land and he then caused a search to be done on plot #60 and was informed that there was no registered document. These aforementioned steps seemed probable and plausible and so on a balance of probabilities, having considered the 2nd Defendant's evidence and the uncontradicted receipt which evidenced a payment of $5000.00 the Court found as a fact that on the 13th January, 2014 the 2nd Defendant paid to the 1st Defendant the sum of $5,000.00 as a down payment on plot #60 pursuant to the other conditions outlined in the receipt and accordingly found that a 'January equity' was created in favour of the 2nd Defendant.

30. In relation to the issue as to when the 2nd Defendant took possession of the land, the Court noted that at paragraph 9 of his witness statement, he stated that once he determined the boundaries of the land, he gave instructions to clear same. The witness gave no evidence as to when and how the boundaries were clarified and though he

attached several receipts in relation to the alleged works done on the land as between January to May 2014, none of the authors of the receipts came before the Court and more importantly no evidence was adduced from any of the persons who allegedly worked on the land. The Court noted the date on which the lease in favour of the 1st Defendant was registered and considered paragraph 26 of the Claimant's witness statement, where she stated that by September, 2014 she had been informed that the 1st Defendant had collected the Deed of Lease from the Commissioner of State Lands. The evidence of both the Claimant and the 2nd Defendant suggested that it was during June or July of 2014 that the 1st Defendant asked them both for increased payments on account of the purchase of the land. The Court found that it was probable and plausible to conclude that after the lease was registered, the 1st Defendant began to actively engage both the Claimant and the 2nd Defendant for further sums as he was engaged in a system of 'kiting' and as a result the June and July equities were created. The Court noted the date of the agreement of sale with the 2nd Defendant and the Power of Attorney and also noted that the agreement reflected the payment of a deposit of $50,000.00. There was also a receipt, of even date, for $45,000.00. The Court found as a fact that the 2nd Defendant did pay to the 1st Defendant a further sum of $45,000.00 and that payment together with the payment of $5,000.00 in January was reflected as a $50,000.00 down payment in the Agreement for Sale. The Court also noted that the wording of the Power of Attorney enabled the 2nd Defendant as at the 28th July, 2014 to take possession of the said land and on a balance of probabilities the Court found as a fact that the 2nd Defendant took possession of the said lands and commenced cultivating and/or preparing same not in January, 2014 but on or after the 28th July, 2014. The Court felt it was more probable that after the Registration of the Deed of Lease in favour of the 1st Defendant, steps were taken to execute a written agreement and to formalize the January equity and based on legal advice, a Power of Attorney was also executed. By the execution of the Power of Attorney, the 2nd Defendant became authorised to exercise control over and enter plot #60 and thereafter he took possession of same.

31. The Court also considered the evidence as contained in the 2nd Defendant's witness statement and on a balance of probabilities found that there was no reason which operated

so as to cast doubt that a payment of $50,000.00 was made on the 10th October, 2014. The Court also found that the Agreement for Sale with the 2nd Defendant was not inconsistent with the receipt dated 13th January, 2014, given the restriction which then existed in relation to the disposition of the interest in the lands given to former Caroni workers, it was necessary for the Agreement for Sale reflect that completion would take 5 years.

32. On the issue of the 6th November, 2016 lease (the November lease), the Court noted that at the time of the execution of same, the 1st Defendant had been served with the Claimant's claim. The Court also noted that the 2nd Defendant indicated under cross examination that he could not remember whether he was told of the court action before or after he signed the November lease and he said he could not recall the details attendant to the execution of same.

33. Given the outrageous conduct of the 1st Defendant in courting both the Claimant and the 2nd Defendant in his attempt to sell the land, the Court found that it was more probable and plausible to hold that after he was served with the Claimant's claim and having sought an extension of time to file a defence, he panicked and would have told the 2nd Defendant from whom he had collected $100,000.00, (as opposed to the $40,000.00 which he had collected from the Claimant), that he had been sued. The Court is therefore of the view that the November lease was executed in an attempt to put the lands out of the Claimant's reach. However, due to the Claimant's diligence and the alacrity of her attorney, the Court's jurisdiction was invoked and an injunctive order was issued which prevented the registration of the said lease and/or any other transfer of the interest in the said land.

34. The Court noted with alarm that the November lease stated that the consideration was $50,000.00, when $50,000.00, in fact, was the unpaid balance due to the 1st Defendant by the 2nd Defendant. There is a tendency for deeds to reflect sums that are less than the sums actually paid and such action must be condemned as it is reflective of intention to defraud the State of revenue via Stamp Duty. Attorneys should desist from facilitating

such illegal acts and disciplinary and/or criminal sanctions ought to be imposed when such a circumstance is established.

35. The actions of the Defendants and those who may have knowingly facilitated the execution of the lease dated 6th November, 2016 must be condemned and it is simply unfathomable that persons would engage in such a course of action after the Court's jurisdiction was invoked.

Effect of the Court's fact finding

36. Having found the facts as aforementioned, it is evident that the 2nd Defendant had an equity in relation to the said land which pre-existed the Claimant's equity, and so the issue to be resolved, is whose equity should be given priority?

The Law – Priority of Equities

37. The general rule in **CV2005-00548 Jontae Tinto & Anor. V. Roosevelt Thompson & Anor**. Stollmeyer J. referring to Snell's equity, set out at page 4 of the judgment, the law as follows:-

> *"The general rule in equity as to the priority of equitable charges (see Snell's Equity 31st Ed. Para 4-03) is that he who is first in time in stronger in law. The principle has more to do with the times at which the competing charges were created than with the capacity of a person to dispose of an interest, as is the position in law. The person"…whose equity attached to the property first will be entitled to priority over the other. Where the equities are equal and neither Claimant has the legal estate, the first in time prevails".*

38. The Court in **Rice v. Rice (1853) 61ER646** sought to define that rule succinctly and accurately. The Court stated:-

> *"…To lay down the rule therefore with perfect accuracy, I think it should be stated in some such form as this:- "As between persons having only equitable interests, if their equities are in all other respects equal, priority of time gives the better equity; or, qui prior est tempore potior est jure"."*

39. **Rice** suggested that 'priority of time is the ground of preference last resorted to' and it appears that the latter statement was not approved by the Privy Council in **Abigail v Lapin [1934] A.C. 491,** where it was stated that "*….that prima facie priority in time will decide the matter unless……that which is relied on to take away the pre-existing equitable title can be shown to be something tangible and distinct having grave and strong effect to accomplish this purpose."*

40. Subsequent cases suggest that the owner of the prior equity, if he, by his own act or omission, causes the party with the subsequent equity to take that second equity without any fault on his part, would lose his priority. In **Heid v. Reliance Finance Corporation Pty Ltd. (1983) HCA 30** the Court, at paragraph 6 of the judgment, quoted Farwell J. in the case of **Rimmer v. Webster (1902) 2 HC 163** where he said:-

> *"If the owner of the property clothes a third person with the apparent ownership and right disposition thereof, not merely by transferring it to him, but also by acknowledging that the transferee has paid him the consideration for it, he is estopped from asserting this title as against a persons to whom such third party has disposed of the property, and who took it in good faith and for value."*

41. The Court recognised that a circumstance such as where an owner of the later equitable interest was led by the conduct of the owner of the earlier equitable interest, to acquire the later interest is one instance of unequal equities in which the later interest will be preferred and at paragraph 7 of the judgment the Court articulated a more *"general and flexible principle"* in which preference is given to the holder of the better equity consequent on an examination of all the relevant circumstances. The Court also referenced the considerations of the twin principles of *"fairness and justice".*

42. The dicta suggests that the holder of the prior equity may lose that priority to the holder of a subsequent equity by virtue of an estoppel, that is to say, having regard to the conduct of the holder of the prior equity, he could be estopped from asserting the prior equity or from denying the validity of the subsequent equity.

43. In **Barclays Bank D.C.O. v. The Administrator General for Jamaica & Anor. 1973 20 WIR 344**, Fox JA of the Jamaican Court of Appeal relied on a principle of equity quoted in the case of ***Lipbarrow v. Mason 1787 2TR 63*** which states that:-

> *"Where one of two innocent persons must suffer by the acts of a third, he who has enable such third person to occasion the loss must sustain it."*

44. The Court of Appeal considered decisions throughout the Commonwealth on competing equities including **Rice v Rice** and held at pages 355, at paragraphs H and D as follows:

Paragraph H:

> *"In such a situation the general rule of equity is that the person whose equity is attached to the property first, will be entitled to priority over the other. It must be borne in mind however, that the rule that the first in time prevails only applies where the equities are equal. If the moral claims of the plaintiff and the defendant are not on an equality, the one who has the better claim will be preferred, although his interest arose after the other's. "*

Paragraph D:

> *"On the question of priorities, priority in point of time, gives the better equity where the equities are in other respects equal. See Rice v Rice. Much has been said to demonstrate that the equities here are not equal. The Bank did all it could. There is much that Hamilton could have done and didn't do. The Bank has the better equity and is to be preferred. Hamilton by his conduct had put it in the power of Reid to deceive the Bank and raise money from the Bank and Hamilton must take the consequences."*

45. This approach appears to be consistent with the general trend in law as followed in the cases dealing with the effect of conduct on the priority of equities. Whether the jurisprudential base lies in estoppel, misrepresentation or the general principles of equity, a person having a prior equity must not act or omit to act in such a fashion which had or

might have had the effect of inducing the latter interest holder to act to his or her prejudice (**Butler v. Fairclough 1917 3CLR 78 @91**).

46. In **Barlin Investments Pty Ltd v Westpac Banking Corporation [2012] NSWSC 699** the Court held at page 9, paragraph 31 as follows:

> *"The traditional principle employed to determine priority between competing equitable interests is that, where the merits are equal, the earlier in time prevails over the latter, Rice v Rice (1853) 61 ER 646 at 648. However, later cases have emphasised that the principle should not be applied mechanically and that the real task of the court "is to determine where the better equity lies":* ***Latec Investments Ltd v Hotel Terrigal Pty Ltd (In liquidation) (1964-1965) 113 CLR 265 at 276*** *per Kitto J; approved in* ***Heid v Reliance Finance Corporation Pty Ltd (1983) 154 CLR 326*** *at 333 per Gibbs CJ (Wilson J agreeing), 339 per mason and Deane JJ.*

47. The excerpt from **Barlin Investments Pty Ltd v Westpac Banking Corporation [2012] NSWSC 699** is inaccurate in so far as it cites **Rice v Rice** as authority for the principle that the equity which is earlier in time prevails and that later cases softened the mechanical application of this principle.

48. The Court in **Barlin Investments Pty Ltd v Westpac Banking Corporation** (supra) at page 10, paragraph 32 accurately recognized however that an act or omission on the part of the prior interest holder is only one of the circumstances in which the later interest holder may be held to have the better equity:

Paragraph 32:

> *"One circumstance in which the later interest holder will be held to have a "better equity" than the earlier is where the earlier interest holder is guilty of an act of omission which have or might have had the effect of inducing the later*

interest holder to act to his or her prejudice: ***Butler v Fairclough (1917) 23 CLR 78*** *at 91 per Griffith CJ."*

49. In summary, one principle which runs through the decided cases in relation to conduct is that, for the holder of a prior equity to lose his priority he must be in some way culpable and there should be a causal link between the impugned conduct, either by act or omission and the creation of the subsequent equity.

50. The Court is of the view the position articulated in **Rice** (supra) which was developed in **Barclays Bank** (supra), **Barlin** (supra), **Latec Investments** (supra) and **Heid** (supra) is one which should be adopted. In cases as between persons having rival equitable interests, the conduct of the parties and all the circumstances must be considered in order to determine who has the better equity and priority of time ought not to be viewed as being determinative of the issue except where the merits of the respective equities are equal.

51. Where there exists two or more equitable interests, the Court should engage in a comprehensive examination of all the circumstances with a view of determining inter alia whether the owner of the latter equity was induced by the first equity holder's conduct to acquire the later equitable interest and/or whether either holder committed some act or engaged in conduct when prejudices their respective equitable entitlement.

52. Conduct should be considered so as to determine whether the demands of justice and fairness would require that one interest is to be postponed/ or preferred as against the other, however for conduct to be deemed relevant, it must be directly relate to the nature and condition of the equity or the manner and circumstances by virtue of which the equity was acquired.

53. The Court is of the view that in this jurisdiction, the ultimate question to be asked is "who has the better equity?" and the determination of same would require a flexible consideration of all the relevant circumstances including, inter alia, relevant conduct, the identification of negligence by the holder of the earlier interest, the effect of any

representations which could have raised an estoppel, the existence of actions and/or missteps by the earlier interest holder which foreseeably could have contributed to the creation of the later equitable interest and/or any acts or omissions which establish a causal connection to the creation of the subsequent equity. The list of criteria is not and cannot be viewed as being exhaustive and no one factor should take precedence or priority over the other. Each case should be considered based on its peculiar and particular facts and with a view of determining whether it would be inequitable for the holder of the earlier interest to retain the priority.

Application of the law to the facts

54. The Court considered the fact that the 2nd Defendant had the prior interest by virtue of his payment of $5,000.00 on the 13th January, 2014, the fact that he paid $100,000.00 and the Claimant paid $40,000.00, the fact that he exercised control over the said land and cultivated same while the Claimant never exercised any authority or control over the land. The Court also considered the 2nd Defendant's participation in the execution of the November lease and though his conduct was unacceptable, it did not affect the nature of the equity as at November 2014 as the respective interests of the parties were entrenched and established at that time.

55. There exists no evidence to suggest that the 2nd named Defendant acted in any way so as to encourage the Claimant to make a deposit nor is there any evidence of any act of negligence which can be attributed to him. The Court is not of the view that the 2nd Defendant's conduct in relation to the November lease was so unconscionable that it would be improper for it to entertain any equitable claims advanced. Taking all of the evidence in the round and having assessed same as against the considerations of fairness and justice, there is no reason why on a balance of probabilities the 2nd Defendant's prior interest ought to be postponed in favour of the Claimant and ultimately the Court finds as a fact that the 2nd Defendant has the better equity.

Orders

56. Accordingly, this Court hereby orders as follows:

1) The 1st Defendant shall pay to the Claimant damages in lieu of specific performance which shall be assessed by a Master in Chambers.

2) The unpaid balance of $50,000.00 due and owing to the 1st Defendant, shall be paid by the 2nd Defendant directly to the Claimant and this payment shall be taken into account and form part of the Claimant's entitlement to damages for specific performance. The said sum shall be paid within 60 days of the date herein and upon proof of payment of same the 1st Defendant shall execute a Deed of Lease in favour of the 2nd Defendant. In default of the 1st Defendant's execution of same, the Registrar of the Supreme Court shall be empowered to execute same for and on behalf of the 1st Defendant. The cost associated with same shall be paid by the 2nd Defendant.

3) The parties shall be heard on the issue of costs in relation to the substantive action as well as in relation to the costs associated with the injunctive proceedings.

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FRANK SEEPERSAD

JUDGE