REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2020-00176

BETWEEN

ANDY WILLIAMS

Claimant

AND

RUDY RAMPERSAD

First Defendant

DOMINIQUE ASHTON DEONARINE

Second Defendant

SASENARINE DEONARINE

Third Defendant

DIANDRA ANDREA DEONARINE

Fourth Defendant

Date of Delivery: 26 July, 2023.

Appearances:

1. Mr. R. Gosine, Attorney-at-law for the Claimant.
2. Mr. W. Seunath, Attorney-at-law for the First Defendant.
3. Ms. S. Dhanipersad, Attorney-at-law for the Second, Third and Fourth Defendants.

DECISION

1. Before the Court for its determination is the Claimant's Re-Amended Claim Form and Amended Statement of Case filed on 24 March 2021 whereby the Claimant sought the following reliefs:
    a. Specific performance of the written agreement dated 14 September 2019 made between the Claimant and the First Defendant for the sale of that certain piece or parcel of land comprising 8974 square feet together with the building standing thereon described in Deed of Lease dated 19 November 1980 registered as No.

23033 of 1980 and situated at Gasparee Island in the Ward of Diego Martin ("the said property").

b. An injunction restraining the Defendants whether by themselves, their servants and/or agents or whosoever otherwise from disposing and/or selling and/or selling and/or entering into any agreement for sale of the subject property.

c. An order that the First Defendant do take the necessary steps to transfer the subject property including executing the Deed of Conveyancing for the subject property to the Claimant. In default of this by the First Defendant, the Assistant Registrar of the Court shall be empowered to execute same.

d. An Order that the First Defendant do provide to the Claimant an up-to-date WASA Clearance Certificate and/or any other approvals in the Defendant's possession with respect to the subject property.

e. Further and/or alternatively a declaration that by letters dated 31 October 2019 and 13 December 2019 together with the filing of the Claim Form and Statement of Case filed herein on 16 January 2020, these conditions and/or approvals and/or documents were waived by the Claimant and further that these conditions and/or approvals and/or documents were for the exclusive benefit of the Claimant.

f. A Declaration that having regard to the agreement between the Claimant and the First Defendant dated the 14 September 2019 the Second, Third and Fourth Defendants ought to have had notice of the Claimant's interest in the subject property.

g. A declaration that the Second, Third and Fourth Defendants cease all works on the subject property.

h. An order that the Second, Third and Fourth Defendants do vacate the subject property.

i. A declaration that the Claimant has always been willing to pay the outstanding balance under the agreement to the First Defendant and had the means to do so.

j. Damages for breach of contract against the First Defendant.

k. Interest.

l. Costs.

m. Such further and/or other reliefs as the Honourable Court may deem just in the circumstances of the case.

n. An injunction restraining the Second, Third and Fourth Defendants from registering the Deed of Assignment dated the 18 December 2019 and that the status quo of the subject property is maintained pending the determination of the matter herein.

The Claimant's Facts:

2. The Claimant's claim is for specific performance of the written agreement dated 14 September, 2019 ("the agreement for sale"), made between the Claimant (Purchaser) and the First Defendant (Vendor), for the sale of the "down the islands" property, known as that certain piece or parcel of land comprising 8,974 square feet together with the building situate thereon, described in Deed of Lease dated 19 November, 1980 registered as No.23033 of 1980 and situate at Gasparee Islands in the Ward of Diego Martin ("the said property").

3. The agreement for sale prescribed that the First Defendant agreed to sell and the Claimant agreed to purchase the property for $1,750,000.00, with a deposit of $5,000.00. The balance of the purchase price in the sum of $1,745,000.00 ought to have been paid by 14 December, 2019, as per the agreement for sale and it was registered at the Legal Affairs Registry.

4. The Claimant contends that he sent two letters through his Attorney, dated 31 October, 2019 and 13 December, 2019. The latter of the said letters called upon the First Defendant to provide the requisite WASA Clearance Certificate and other approvals and outlined that he was making time of the essence.

5. A Deed of Assignment dated 18 December, 2019 was executed by the First Defendant in favour of the Second, Third and Fourth Defendants, however same was not registered as at the date of filing of the Claimant's claim.

The First Defendant's Defence and Counterclaim:

6. The First Defendant's Defence was as follows:-
    a. Clause 4 of the agreement for sale was of paramount importance which provides that should there be any defect in title to the said lands, the Vendor shall refund the purchaser all monies paid together with all other legal expenses incurred without deductions.
    b. The First Defendant contends that the Claimant introduced new terms and conditions and made it mandatory for him to supply a WASA Clearance Certificate and an up to date WASA bill, Town and Country planning approval and a completion certificate ("the documents"). The First Defendant indicated he could not provide the said documents and that the agreement for sale expired on 14 December, 2019.

7. By way of counterclaim the First Defendant sought the following reliefs:
    a. A declaration that the Claimant has breached and/or repudiated the said agreement which entitled the First Named Defendant to accept repudiation.
    b. A declaration that the First Named Defendant was lawfully entitled to rescind the said agreement by invoking Clause 4 of the Agreement thereof.
    c. A declaration that the said agreement be rescinded and that the First Named Defendant be relieved of all obligations thereunder.
    d. Costs.
    e. Such further and/or other reliefs as the nature of the case may require.

The Second, Third and Fourth Defendant's Defence:

8. The Second, Third and Fourth Defendant testified that they purchased the subject property on 18 December, 2019. They contended that subsequent to the purchase, they spent approximately $1 million dollars by conducting extensive renovations and constructing a jetty.

The Evidence:

9. The Court heard evidence from the Claimant, the First Defendant, the Third Defendant and Mr Indar Singh.

Issues to be determined:

10. The Court has to determine the following issues:
    a. Whether the registered agreement for sale should be given priority over the unregistered Deed of Assignment dated 18 December 2019;
    b. Whether the agreement of sale was terminated on 14 December 2019 and whether the absence of a WASA bill/ WASA clearance and the other documents would cause a defect in title and/ or whether the failure of the First Defendant to provide these documents constituted a breach of the agreement for sale; and
    c. Whether the Claimant is entitled to an order for specific performance.

Resolution of the issues:

Issue 1- Whether the registered agreement for sale should be given priority over the unregistered Deed of Assignment dated 18 December 2019

11. Section 16 Registration of Deeds Act Chap 19:06 provides as follows:

(1) Every Deed whereby any lands in Trinidad and Tobago may be in any way affected at law or in equity shall be registered under this Act, and every such Deed duly registered shall be good and effectual both at law and in equity, according to the priority of time of registering such Deed, according to the right, title and interest of the person conveying such lands against every other Deed, conveyance or disposition of the same lands or any part thereof, and against all creditors by judgment of the same person so conveying such land.

(2) Every such Deed that is not duly registered shall be adjudged fraudulent and void as to the lands affected by such Deed against any subsequent purchaser for value or mortgagee without notice of the same lands or any part thereof, whose conveyance shall be first registered.

12. In **CV2007-00964 Ashram Anoop v Rabindranath Dhani and another** the Court at paragraph 27 stated in relation to notice:

> "27. The onus lies on a purchaser to establish same. In MacMillan Inc v Bishopsgate Trust PLC (No. 3) 1 Millett J accurately summarised the principles as follows:
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> > "The English priority rules In English law the order of priority between two competing interests in the same property depends primarily on whether they are legal or merely equitable interests. Where both interests are equitable – or both legal, for that matter – the basic rule is that the two interests rank in the order of their creation. In the case of equitable interests the order of priority may be reversed in special circumstances, but "where the equities are equal, the first in time prevails." The absence of notice of the earlier interest by the party who acquired the later interest is irrelevant, even if he gave value. He cannot gain priority as a bona fide

purchaser of the legal estate without notice if he has not acquired the legal estate. Where, however, the first is equitable and the second is legal the position is different. A bona fide purchaser for value who obtains the legal estate at the time of the purchase without notice actual or constructive is entitled to priority in equity as well as at law: see Pilcher v Rawlings (1872) LR 7 Ch App 259. But he must have obtained the legal estate, and the question of notice is normally tested at the time when he obtained it. In English law notice in the present context includes not only actual notice (including 'wilful blindness' or 'contrived ignorance,' where the purchaser deliberately abstains from an inquiry in order to avoid learning 1 (1995) 1 WLR 978 at 999 – 1000 (Page 3 of 14 the truth) but also constructive notice, that is to say notice of such facts as he would have discovered if he had taken proper measures to investigate them. The doctrine of constructive notice has developed in relation to land, where there is a recognised procedure for investigating the title of the transferor. There is no room for the doctrine of notice in the conveyancing sense in a situation in which it is not the custom and practice to investigate transferor/s title. But in the wider sense it is not so limited. In Barclays Bank Plc v O'Brien (1994) 1 AC 180 (a case concerned with land, but in which the defect in title – the presence of undue influence – could not be discovered by the routine investigation of title) Lord Browne-Wilkinson said, at pp. 195 – 196:

> 'The doctrine of notice lies at the heart of equity. Given that there are two innocent parties, each enjoying rights, the earlier right prevails against the later right if the acquirer of the later right knows of the earlier right (actual notice) or would have discovered it had he taken proper steps (constructive notice). In particular, if the party asserting that he takes free of the earlier rights of another knows of certain facts which put him on inquiry as to the possible

existence of the rights of that other and he fails to make such inquiry or take such other steps as are reasonable to verify whether such earlier right does or does not exist, he will have constructive notice of the earlier right and take subject to it.'

13. The Court in **CV2015-02816 Jim Grant and another v Lerrie Bovell** at paragraph 59 stated, in relation to Section 16:

> "59. The section sets out that Deeds affecting land are required to be registered, and that they take priority in accordance with the date of their registration, so that whenever a Deed was executed, they cannot take precedence over a Deed that is registered earlier, even if it is executed after the Deed that is registered later. If there is a purchaser for value without notice, then the later registered Deed is deemed to be void and fraudulent."

14. There is no dispute that the agreement for sale was registered. During cross examination, the First Defendant testified that he told the Second, Third and Fourth Defendants that the subject property was subject to a previous agreement for sale but testified that he could not remember whether he told them that it was registered nor could he remember whether he gave the Second, Third and Fourth Defendants a copy of the said agreement.

15. The registered agreement for sale stood first in time in relation to the subject property and as a consequence must take precedence over the later unregistered deed of assignment.

Issue 2: Whether the agreement of sale was terminated on 14 December 2019 and whether the absence of a WASA bill/ WASA clearance and the other documents would cause a defect in title

and/ or whether the failure of the First Defendant to provide these documents constituted a breach of the agreement for sale.

16. During cross-examination the First Defendant testified that he assumed that the agreement for sale came at an end on 14 December 2019 and consequently he was entitled to enter into a new transaction for sale of the property with the Second, Third and Fourth Defendants.

17. In **Mungalsingh v Juman [2015] UKPC 38** the parties entered into an agreement for sale of land whereby Juman (respondent) paid a deposit and during the three months that followed the agreement there were discussions between the parties about obtaining an up to date WASA Certificate and Land and Building Taxes receipts however neither documents were provided to Juman. After the 90 days had elapsed, Mungalsingh wrote to Juman calling upon him to pay the balance before a certain date as to which time shall be of the essence but there was no reply by Juman until after the new date. Juman responded and explained the delay in completion was caused by Mungalsingh's failure to provide the said documents but that he wished to complete the agreement. A few months later Mungalsingh wrote to Juman saying the transaction was at an end and Juman issued proceedings for specific performance which was granted by the trial judge as well as on appeal to the Court of Appeal.

18. At paragraph 13 the Board stated:

> "13. In the normal way, time was not of the essence of the date for completion of the Agreement. In other words, while failure by one party to complete as soon as good title had been shown (or promptly thereafter) may amount to a breach of contract, it would not entitle the other party to treat the Agreement as at an end. Once the date for completion had passed, either party, being ready able and willing to complete, could make time of the essence by requiring the other party to complete within a reasonable time. If the other party did not complete within

the stipulated time, the first party could then treat the Agreement as at an end. In this connection, the law is as set out in Raineri v Miles [1981] AC 1050, 1083A-1085F and 1088F-1091H by Lord Edmund-Davies and Lord Fraser of Tullybelton respectively."

19. The agreement for sale was set for completion by 14 December 2019. By letter of 13 December 2019 the Claimant wrote to the Defendant in which he, *inter alia*, purportedly made time of the essence under the said agreement and gave the Defendant 14 days to complete the transaction. There was no response by the First Defendant to this letter as his position was that it was never served on him. For the reasons outlined later in this judgment the Court rejects the First Defendant's assertion that he never received the letter of 13 December 2019.

20. Danckwerts J in **Re Barr's Contract [1956] Ch 551 at 556** stated :

> "Apart from the provisions of any plain and clear conditions of sale, the law about making time of the essence of the contract for the purpose of completion… is subject to the following conditions: first of all, the vendor must be able, ready and willing to proceed to completion… Secondly, at the time when the vendor purports to make time of the essence, the purchaser must be guilty of such default as to entitle the vendor to rescind the contract subject to its being done by a reasonable notice. Thirdly, once the right to serve a notice of the kind in question has arisen, the time allowed by the notice must be reasonable."

21. Having regard to the learning from the Board in *Mungalsingh* (supra), time of the essence can only be made after the completion date has passed. At that stage either party who is ready, able and willing to complete, could then make time of the essence and require the other party to complete within a reasonable time. The Claimant was unable to put the First Defendant on notice prior to the completion of the sale agreement and as at the

13 December 2019, no breach had yet occurred but from the 14 December 2019 the Claimant would have been entitled to put the First Defendant on notice.

22. The Court also has to consider whether the failure of the First Defendant to provide the requested documents amounted to a breach of the agreement for sale or whether, as the First Defendant submits, the Claimant's request for same and his inability to provide same was tantamount to a defect in title and as a consequence he was entitled to invoke Clause 4 of the agreement for sale.

23. The First Defendant's position is that the Claimant's insistence to be provided with the documents and his inability to provide same resulted in an operative defect in title and as a result he was entitled to treat the agreement for sale as having ended. This is a position which this Court finds to be devoid of merit.

24. In ***Mungalsingh*** (supra) the Board noted that unpaid water rates and unpaid land tax can each result in distraint or even sale of the property concerned under the Rates and Charges Recovery Act and the Water and Sewerage Authority Act, and concluded that the trial judge was correct in finding that in this jurisdiction, the vendor must provide these documents before he is in a position to show good title. Therefore it was not open to the vendor to serve a notice to complete, making time of the essence, on the date that he purported to do so, since he had not shown good title by that date. This was stated by the Board at paragraph 20 and 22 in ***Mungalsingh*** (supra):

> "20. More particularly, Mr Chadeesingh said, and the Judge accepted, that conveyancing practice in Trinidad and Tobago was that good title was not shown unless the seller produced the Documents. On the face of it at any rate, there is no reason to doubt this. Unpaid land tax gives rise to a charge on the relevant property (see section 18 of the Lands and Buildings Taxes Act), and unpaid water

rates and unpaid land tax can each result in distraint on, or even the sale of, the property concerned (see sections 7-13 of the Rates and Charges Recovery Act, section 74(5) of the Water and Sewerage Act and sections 22-27 of the Lands and Buildings Taxes Act respectively). Accordingly, it is easily understandable why a buyer of property would wish to be sure that neither water rates nor land tax were owing in respect of that property before he completes his purchase.

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22. The questions whether the Documents must be produced by a seller, and, if so, whether their production is a matter of title, must, at least to some extent, be governed by the general practice of conveyancers in the jurisdiction in question. (That is supported by the judicial observations quoted at the beginning of para 5.002 of Emmet and Farrand and by the "doubt" referred to in para 15-082 of Megarry & Wade). In the present case, it appears to the Board that the evidence of Mr Chadeesingh, coupled with the fact that unpaid water rates and land tax can lead to distraint on, or even the sale of, the relevant property, renders it impossible for Mr Mungalsingh to challenge the Judge's conclusion that in Trinidad and Tobago the vendor must produce the Documents before good title is shown. Further, the evidence of Mr Chadeesingh, coupled with the fact that completion meetings are no longer common practice, at least in England and Wales, renders it hard to argue that Mr Mungalsingh could have contended that the production of the Documents should have waited until a completion meeting."

25. In **CV2015-01511 Bindawatee Maharaj and another v Gowkarran Jabar** the Court stated at paragraph 54:

"54. In the instant case the Defendants did not serve a notice to complete therefore time was not made of the essence. In the absence of such a notice the

Defendants were not entitled to conclude even after reasonable time had passed that the Claimants had abandoned the Agreement for Sale. In any event, the Defendants could not have served a notice to make time of the essence since the evidence was they did not provide the Claimants with the necessary documents i.e. Deed of Conveyance, WASA Clearance Certificate, Land and Building taxes receipt; approval from Town and Country Planning even when she was requesting those documents for her to complete the sale. The Defendants were not in a position to show good and marketable title and therefore they were not entitled to treat it as at an end."

26. In **Day v. Singleton [1899] 2 Ch 320** the Court suggested that a vendor must do everything in his power to enable completion of the contract. In this case Jeune P. stated at page 333:

> ""…I do not think it can be doubted that it is the duty of a vendor to make a good title for his purchaser if he can, and certainly not to do anything to impair or spoil such title. The emphatic words of Turner LJ in Williams v. Glenton have been often referred to: "The vendor, however, is bound to complete the contract, and if he does not take the steps which are necessary to enable him to do so, he is liable for damages upon the contract; and heavy damages would be given if, having the means of completing the sale, he should decline to take the proceedings necessary for that purpose."

27. Based on the instant facts, the Claimant's request for the documents which included the WASA Clearance and the WASA bill was not unreasonable as outstanding bills could operate as a charge against the property. Although the First Defendant's evidence was that properties on Gasparee Island do not have a WASA connection and as a consequence, no WASA Clearance receipt can be obtained, he provided no documentation from WASA

indicating same. The Court is of the view that the First Defendant could have discharged his obligations by producing a document which supported his assertion that the property had no WASA connection. The First Defendant's failure to provide the requested documents resulted in a breach of the agreement for sale and as at the date set for completion, the First Defendant was not in a position to close. As a result, the First Defendant could not have treated the agreement as having ended and the option as to how the transaction was to proceed rested with the Claimant.

28. In **CV2011-02422 Indal Chulhan v Alice Partap and others** the Court, in addressing breaches of contracts stated at paragraph 36, 37 and 38:

> "36. Where a contract fixes a date for completion and one party fails to complete by that date, although time is not made of the essence in that contract, the party in default is deemed to be in breach of that non-essential term. The date fixed for completion cannot be treated as a mere target date. As a result the innocent party may immediately thereafter give a notice that the other party is in breach of contract and make time of the essence: Bidaisee v Sampath Civil Appeal No. 165 of 1985.
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> 37. It is settled law that for time to be of the essence it must be so stated in the contract. However, although time is not originally made of the essence in the contract in this respect, it may be made so by either party giving proper notice to the other to complete within a reasonable time, and such a notice may be served immediately after the contractual date for completion has passed: Halsbury's Laws of England Volume 42. Fifth Edition, para 120.
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> 38. Where a contract fixes a date for completion and one party fails to complete by that date, although time is not made of the essence in that contract, the party

in default is deemed to be in breach of that non-essential term: Halsbury's Laws of England Volume 42. Fifth Edition, para 120. In the present case, although time was not made of the essence, either expressly in the memorandum or subsequently by the First Defendant sending to the Claimant a notice after the date for completion had passed, the contract does fixes a date for completion. The Claimant, having failed to abide by this date, is deemed to be in breach of that non-essential term."

29. As at 14 December 2019, the First Defendant having not provided the WASA Clearance and WASA Bill stood in default and was still in possession of the Claimant's deposit. In addition by the letter of the 13 the Claimant clearly signalled that he still wanted to proceed with the transaction. As a result any representation made by the First Defendant to the other Defendants that the contract with the Claimant had ended was patently inaccurate. The Court is therefore of the firm view that as at the said date the agreement for sale was not terminated and the First Defendant was not entitled to treat the agreement for sale with the Claimant as at an end.

Issue 3: Whether the Claimant is entitled to an order for specific performance.

30. In **Civ App No 129 of 2011 Colvin Blaize and another v Subhadra Chankadyal and others**, the Court of Appeal stated, in relation to specific performance at paragraph 23:

"23. There is no dispute that the agreement for sale, being an agreement for the sale of land, is one that is capable of being specifically performed. The general rule is that specific performance will not be ordered where damages are an adequate remedy. In contracts for the sale of land damages have generally not been regarded as an adequate remedy. As the Board said, "In the context of a contract for the sale of land, damages have traditionally not been regarded as an adequate

remedy on the basis that each piece of land is unique" (see Mungalsingh v Juman [2015] UKPC 38 at para 33). However, that notwithstanding an order for specific performance does not follow as a matter of course in a contract for the sale of land. The remedy is discretionary. The discretion is a judicial remedy and is to be exercised on well-established principles."

31. The Agreement for Sale in this matter was between the Claimant and the First Defendant and no hardship was pleaded by the First Defendant. Consequently, that issue does not arise for this Court's consideration. The issue of hardship was also not pleaded by the Second, Third and Fourth Defendants and so it cannot be addressed. Even in the absence of such a pleading, there is no evidence to establish that the First Defendant suffered or is likely to suffer any hardship and on the facts it is also patently evident that the Claimant did nothing wrong.

32. Notably, the Second, Third and Fourth Defendants are deemed to have had constructive notice of the agreement for sale. Their failure to defer to the priority of the agreement for sale is regrettable. The Court also notes with a degree of surprise and suspicion, the fact that after the Second, Third and Fourth Defendants were made aware of the instant action in October 2020, they continued to expend monies on the property.

33. The Court cannot understand how or why the Second, Third and Fourth Defendants, though notified by the First Defendant that there was a subsisting agreement for sale, went ahead and executed a deed of assignment in December 2019 and it is troubling that they did so acting upon legal advice tendered by Mrs Gayadeen Gopeesingh, Attorney-at-law. It is also difficult to comprehend the basis upon which they elected to continue with the effecting of work on the property after they were notified that there was a pending court action in relation to the said property. It is also noteworthy that these Defendants elected not to file any counterclaim or Ancillary Claim and as a result these Defendants cannot avail themselves of any relief.

34. The agreement for sale was duly registered and notice of same was given to the world that the Claimant had a contract with the First Defendant for the sale of the said property. This agreement took priority over the unregistered deed of assignment executed in favour of the Second, Third and Fourth Defendants. The First Defendant failed to provide the requested documents and stood in breach of the agreement for sale and he was not in a position to treat the contract at an end. In the circumstances, the Claimant is entitled to an order for specific performance of the agreement for sale.

35. With respect to the letter of 13 December 2019, the Court is resolute in its view that the document was served on the First Defendant. During cross-examination, the First Defendant stated that the letter was not served and that his home address and mailing address were different although sometimes he would get mail at his home address. He further stated he lived in a flat house and not a two storey house and asserted that his address was 5A Palm Drive and not 5 Palm Drive and he said he lived at 5A Palm Drive. He also testified that he lived in the back house not the front house. The front house, according to him, was rented to tenants. The Court also noted with disapproval that the First Defendant did not call his wife as a witness although the Claimant testified that he spoke to her on the 13 of December when he went to effect service.

36. The Court rejected the First Defendant's position in relation to the letter of the 13 December as he led no credible evidence to disprove Claimant's assertion that he delivered/served 13 December letter on said date. Although Claimant did not call the photographer as a witness, he relied on photographs which showed the alleged service. The Court found that the Claimant's evidence was convincing and probable and categorically rejected the First Defendant's evidence as to service of the said letter.

37. In light of the aforementioned, the Court hereby makes the following orders:

a. The Court orders that there shall be specific performance of the written agreement dated 14 September 2019 made between the Claimant and the First Defendant for the sale of that certain piece or parcel of land comprising 8974 square feet together with the building standing thereon described in Deed of Lease dated 19 November 1980 registered as No. 23033 of 1980 and situated at Gasparee Island in the Ward of Diego Martin and this shall be done within 42 days.
b. The Court orders that the First Defendant do provide to the Claimant an up-to-date WASA Clearance Certificate and/or any other approvals in the Defendant's possession with respect to the subject property.
c. The costs of the injunctive application filed on the 11 December 2020 to be assessed by the Assistant Registrar and paid by the First Defendant to the Claimant.
d. The costs of the Notice of Application filed on the 31 January 2023 to be assessed by the Assistant Registrar and paid by the Second, Third and Fourth Defendants to the Claimant.
e. The counterclaim is hereby dismissed.
f. The First Defendant shall pay to the Claimant costs on the claim and Counterclaim calculated on a prescribed costs basis.

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FRANK SEEPERSAD

JUDGE