

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: SLUHCV2019/0182 consolidated with
CLAIM NO: SLUHCV2019/0184

BETWEEN:

CELIA ANTOINE aka MICK CELIA ANTOINE

Claimant

and

1. CYRIL CADET

(as Administrator of the Estate of Martha Cadet)

First Defendant

2. MERVIN O'BRIAN

Second Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mrs. Lydia Faisal for the Claimant

Mrs. Shahida Charlemagne-Octave for the First Defendant

Mr. Callistus Vern Gill for the Second Defendant

2022: February 24;	(Trial)
April 20;	(Claimant's Submissions)
21;	(First Defendant's Submissions)
2026: January 28.	(Decision)

JUDGMENT

[1] **CENAC-PHULGENCE J:** In this claim, the claimant, Ms. Celia Antoine also known as Mick Celia Antoine ("Ms. Antoine") seeks the following relief against the defendants:

- (a) a declaration that she is the sole owner of Block and Parcel 1217C 211 situate at the corner of Giraudy Street and Cemetery Street in Vieux Fort ("Parcel 211") and that she acquired equitable ownership of the said Parcel upon payment of the price to the first defendant in May 2013;

- (b) an order authorising the Registrar of Lands to delete the first defendant's name in the proprietorship section of the land register for Parcel 211 and entering her name as proprietor;
- (c) vacant possession of the Parcel 211;
- (d) an order (i) restraining the second defendant from erecting any structure on the Property and (ii) that the second defendant remove all concrete erected on the Property;
- (e) General damages for breach of contract for the first defendant for his refusal to complete and sign a deed of sale in her favour with respect to the Property;
- (f) Interest, costs and any other relief.

Background

- [2] On 8th May 2019, on an application for an injunction filed with Claim Number SLUHCV2019/0182, the Court granted an order directing that the second defendant, Mr. Mervin O'Brian ("Mr. O'Brian") whether acting by himself, his servants or agents (i) cease all construction work on Parcel 211; (ii) make no additions of any kind whatsoever, whether of wood or of concrete, or any other material to any existing structure on Parcel 211; (iii) erect no new structure of any kind, whether of a temporary or permanent nature on Parcel 211 and (iv) dig up no soil, nor make any further furrows whether manually or by machine on Parcel 211 until further Order of the Court. As will be seen later, Mr. O'Brian occupies and rents a wooden house on Parcel 211 which is the same parcel of land on which the wooden house rented and occupied by Ms. Antoine stands.
- [3] When the claim was filed on 25th April 2019, it was filed with Claim Number SLUHCV2019/0184. The two matters were consolidated by Order dated 10th July 2019. On 9th October 2019, the Court ordered that all references to the first defendant are with reference to his capacity as administrator of the estate of Martha Cadet.

Issues

- [4] The issues in the main which have to be considered are:

- (i) What is the nature and terms of the Agreement for Sale between Ms. Antoine and Mr. Cadet?
- (ii) Whether Ms. Antoine is entitled to possession of Parcel 211 which is occupied by Ms. Antoine and Mr. O'Brian?
- (iii) Whether a valid contract existed between Mr. O'Brian and Mr. Cadet?
- (iv) Whether the failure of Mr. Cadet to execute a Deed of Sale amounts to a breach of an implied terms of the contract and if so, what remedies is Ms. Antoine entitled to?

[5] This matters hinges very heavily on the assessment of the evidence of the parties.

The Evidence

Ms. Celia Antoine aka Ms. Mick Celia Antoine

[6] In her pleadings Ms. Antoine avers that in 1995, Mr. Cadet was the registered proprietor of a lot of land which had an old wooden dwelling house erected thereon which he agreed to rent to her. The land she averred was registered as Block and Parcel 1217C 211 ("Parcel 211"). In her evidence in chief, Ms. Antoine says she began renting a piece of land with an old wooden house on it at a cost of \$120.00 per month until May 2011. The house was very old and dilapidated, and she had to renovate it to be able to occupy it. The rental was first collected by Mr. Raymond George, who represented Mr. Cadet's family and then Ms. Elmora, Mr. Cadet's cousin.

[7] It was clarified that at the time Ms. Antoine rented the house, Mr. Cadet was not the proprietor of the land as the land was in the name of Martha Cadet, his mother. Mr. Cadet was registered in his capacity as administrator of the estate of his mother on 19th April 2012.¹

[8] According to Ms. Antoine's evidence, Ms. Elmora informed her that the land was being sold, and Mr. Cadet contacted her and informed her that he had two

¹ See Land Register for Parcel 211 at p 31 of the Trial Bundle (TB).

pieces of land for sale, including the one she was occupying. The price for her piece was \$10,500.00.

- [9] Ms. Antoine avers that she agreed to purchase Parcel 211 from Mr. Cadet who prepared the Agreement for Sale (Ms. Antoine's Agreement).² According to her, in the Agreement for Sale, Mr. Cadet erroneously described the Property as Block and Parcel 1217C 212 instead of 211. However, the intention of the parties was in relation to Parcel 211 and not Parcel 212 which was owned by a third party not involved in the transaction.
- [10] Ms. Antoine's Agreement required that she pay the sum of \$5,000.00 as a deposit on the purchase price, the sum of \$200.00 per month beginning 1st July 2011 and the sum of \$250.00 for two further months with the last payment to be paid on 31st August 2013. Notwithstanding the misdescription of the land in the Agreement of which Ms. Antoine was unaware, she accepted these terms and even completed payments ahead of August 2013. None of this was disputed by Mr. Cadet.
- [11] In her pleadings, Ms. Antoine avers that it was an implied term of the contract for sale that Mr. Cadet would execute a deed of sale upon the completion of payments in Ms. Antoine's favour. She further avers that she became the beneficial owner of Parcel 211 upon full payment being made in May (2011).³
- [12] Ms. Antoine gave evidence that Mr. Cadet asked her to meet him at his lawyer's office at the time, on Friday, 13th May 2011 to begin the process of the sale. This was the first time she met Mr. Cadet in person. She met Mr. Cadet and after a few minutes Mr. O'Brian arrived. She says she surmised from the conversation which took place between Mr. Cadet and Mr. O'Brian in her presence, that Mr. Cadet was also selling land to Mr. O'Brian. At the time Mr. O'Brian was occupying an area at the back of the house where she lived. She says she knew

² See p 37 of Trial Bundle (TB).

³ Should be May 2013.

that the parcels of land in Vieux Fort are small, and she thought that there were two different parcels of land.

[13] Ms. Antoine in her evidence describes what transpired at the lawyer's office and subsequently. The lawyer told her and Mr. O'Brian that Mr. Cadet had asked her to prepare two Agreements for Sale, one for Ms. Antoine and one for Mr. O'Brian and indicated that she required a deposit of \$300.00 from each of them. Ms. Antoine indicated that she needed to withdraw the money from the bank and Mr. O'Brian indicated that he did not have the money yet and would return to prepare the Agreement for Sale later. Ms. Antoine left to get the money and returned a few minutes later. Mr. Cadet remained and when Ms. Antoine returned he witnessed the payment of the \$300.00 to the lawyer and the lawyer provided her with a receipt.⁴

[15] The lawyer then requested a deposit of \$5,000.00 towards the purchase of the land. Ms. Antoine returned on Monday, 16th May 2011 and brought a bank draft in the amount of \$5,000.00 to the lawyer. On Tuesday, 17th May 2011, Mr. Cadet called Ms. Antoine and asked her to retrieve the bank draft from the lawyer which she did. Ms. Antoine says the lawyer advised her to get the services of a lawyer to deal with Mr. Cadet but Ms. Antoine was unable to do so as she was unemployed at the time.

[16] On Wednesday, 18th May 2011, Mr. Cadet called Ms. Antoine and asked her to meet him in Castries with the bank draft. She and her daughter, Vigna Antoine ("Vigna") travelled to Castries and met with Mr. Cadet whom she did not know in person. Earlier she had said that she had met Mr. Cadet for the first time at the lawyer's office. When they got there, Mr. Cadet handed Ms. Antoine two copies of the contract to sign. He asked Ms. Antoine's daughter to sign as witness. Ms. Antoine handed him the bank draft, and he gave her a copy of the contract and kept a copy for himself. Ms. Antoine's evidence of what transpired on her visit to Mr. Cadet is confirmed by Vigna's evidence.

⁴ See p 32 of TB, receipt dated 13th May 2011.

- [17] Ms. Antoine says on Thursday, 23rd May 2011 she returned to the lawyer's office to retrieve her \$300.00 which she had paid as a deposit since no agreement for sale had been prepared and was refunded \$200.00.⁵
- [18] According to Ms. Antoine, Mr. Cadet advised her to commence payments on the balance of the purchase price in July 2011 as she was unemployed at the time. On Monday, 4th July 2011, she made her first monthly instalment towards the purchase price. She says although the computer-generated receipts issued by the bank have all faded, she recorded each payment in a notebook which she has in her possession. She exhibits a copy of the payment record.⁶
- [19] After her payments were completed, Ms. Antoine says she called Mr. Cadet to ask about the deed of sale and asked that he surveys the land so she could begin working on a toilet and to know where the boundaries were since Mr. Cadet had warned that she could not build any concrete structure until he surveyed the two properties so that each party would know exactly the extent of their land.
- [20] Her calls to Mr. Cadet were met with excuses. He initially complained that the surveyor was asking for too much money and then that the surveyor would not just do one lot of land. Her calls continued to be met with excuses. In 2015, she called Mr. Cadet and told him she could not live like this, and she needed her Deed of Sale. He responded that Mr. O'Brian had not completed paying yet and he would ask him to 'speed it up'. She next contacted him in 2018 when in October 2018 she noticed that Mr. O'Brian was erecting pillars in his yard. Mr. Cadet's response when she contacted him was that he had spoken to Mr. O'Brian the day before and he never said that he would be doing this, and that he would call him and get back to her. When he did call back his response was that he had told him that if he put anything and it was on her land, he would have to break it down. She says that in October 2018 she saw Mr. O'Brian converting the house into wall.

⁵ See p. 36 of TB-statement of account dated 23rd May 2011.

⁶ See pp 39-40 of TB.

- [21] Ms. Antoine alleges that after her purchase was completed, she found out that Mr. Cadet intended to sell a parcel of land to Mr. O'Brian in the same general area where she lived. Mr. O'Brian had started to occupy a house a short distance away which belonged to Mr. Cadet and had previously been occupied by a young lady. She alleges that Mr. Cadet intended to and unlawfully purported to sell the same parcel of land which he had sold to her and for which she had paid in full.
- [22] Ms. Antoine says when Mr. O'Brian took up occupation of the house she thought that he was occupying a different parcel of land, she not being certain of the extent of the land that she had purchased and its boundaries. She says the wooden house which Mr. O'Brian occupied was previously occupied by his sister-in-law, Wanda Henry and when she eventually left, Mr. O'Brian moved in. She says it must have been after 2006 when her older daughter was in Form 5 at secondary school because she recalls that Ms. Henry's boyfriend used to play his television loudly and this prevented her from studying.
- [23] She says when Mr. O'Brian came to live in the house there was an old hut on the same land occupied by an old man and when he left sometime in about 2015, Mr. O'Brian broke it down and put up a fence. She says she did not make a fuss because she had already paid for the land and that when the land was surveyed the boundaries would be sorted.
- [24] Vigna confirms Ms. Antoine's evidence. She says in 2006 she was preparing for her CXC exams and Mr. O'Brian was definitely not living in the house.
- [25] Ms. Antoine avers that Mr. O'Brian's Agreement for Sale ("Mr. O'Brian's Agreement") is not a bona fide agreement and was only concocted after Mr. Cadet received her claim. She avers that given the events which took place at the lawyer's office, any Agreement for Sale with Mr. O'Brian would post date the Agreement for Sale with her.
- [26] Ms. Antoine says she discovered that the parcel number on her Agreement for Sale was erroneously stated as Parcel 212 instead of Parcel 211; Parcel 212

did not belong to Mr. Cadet; the parcel of land occupied by her was Parcel 211; that she and Mr. O'Brian were in occupation of the same parcel of land, that is, Parcel 211; Parcel 211 was too small to be divided and could not legally accommodate two houses after she engaged the services of a licensed land surveyor and also sought the assistance of a Crown Lands Officer. She says she was advised that any proposed development of Parcel 211 by her, would not be approved by the relevant authorities because of Mr. O'Brian's presence and further that she would have challenges with erecting a flush toilet facility and septic tank.

[27] Ms. Antoine alleges that Mr. Cadet's actions of selling the same land to Mr. O'Brian that he had sold to her was unlawful and caused her loss and damage in that (i) she has been prevented from utilising the land in that she is unable to erect a toilet facility and septic tank and is inconvenienced as she has to utilise the toilet facility at her daughter's home; (ii) Mr. Cadet knew or ought to have known that it was unlawful to allow Mr. O'Brian to enter Parcel 211 having sold it to her; (iii) Mr. Cadet intended to cause her distress by his continuous failure to agree to sign the Deed to transfer Parcel 211 to her.

[28] Ms. Antoine maintains that there was no agreement for sale between Mr. Cadet and Mr. O'Brian on 13th May 2011 when they all met at the lawyer's office with a view to executing the two agreements which Ms. Antoine thought related to two different parcels of land. She says it is totally untrue that an agreement was in existence since 15th February 2011 and believes that Mr. O'Brian's Agreement is false.

Analysis of Ms. Antoine's evidence

[29] Ms. Antoine admitted in cross-examination that she and Mr. O'Brian do not use the same access to enter Parcel 211. It is accepted and not disputed that she accessed via Giraudy Street while Mr. O'Brian accessed via Cemetery Street.

[30] In her evidence in chief, Ms. Antoine stated that Mr. O'Brian started occupying the house on Parcel 211 after 2006. In cross-examination, when asked what year Mr. O'Brian moved in to Parcel 211, she said she could not recall but she

knew that the neighbour before him was still living there in 2006 and her daughter was writing CXC examinations at the time.

- [31] Ms. Antoine was referred to paragraph 10 of her statement of claim in cross-examination where she said that after she completed her purchase, she discovered that Mr. Cadet intended to sell land to Mr. O'Brian in the same general area and that thereafter Mr. O'Brian began to occupy a house short distance away. She was asked if based on this she was saying that Mr. O'Brian started occupying the property after May 2011 or May 2013, and she responded that they were both living on the property when they purchased.
- [32] She was also asked based on paragraph 10 whether she was saying that she did not know about the sale of Parcel 211 to Mr. O'Brian before May 2013 and she said she knew they went to the lawyer's office together, but she did not know which parcel of land Mr. Cadet sold to him. She just knew he sold to both of them.
- [33] Asked whether it never crossed her mind at the lawyer's office that Mr. O'Brian would have been purchasing the land where he resided on Cemetery Street, she said the lawyer asked both of them for \$300.00 so she assumed that he was also purchasing land, but she did not know what parcel of land he was purchasing.
- [34] Ms. Antoine was asked whether she asked for a copy of the land register so she could see what property she was purchasing, and she said no because she was under the impression that the lawyer was taking care of everything.
- [35] She admitted (i) to being aware that the Land Registry and Surveys Department are public departments; (ii) that she did not ask any questions after she found out the lawyer was no longer representing Mr. Cadet and she just did as he asked and brought the cheque to him; and (iii) that it did not occur to her at the time to do a search at the Land Registry and Surveys Department. She said she did not know that Mr. O'Brian was interested in purchasing the land before she

paid for the land and she did not make further enquiries because she knew she was purchasing a parcel of land.

[36] Asked whether in her conversations with Mr. Cadet he ever indicated that he only had one parcel of land for sale, she said he never indicated anything. However, in her evidence in chief she had said that Mr. Cadet when he contacted her, had told her that he had two pieces of land for sale, including the one she was occupying.

[37] According to her in cross-examination, she had no conversations with Mr. Cadet about sale of property to Mr. O'Brian. She admitted that she would have known from May 2011 that Mr. Cadet intended to sell land to Mr. O'Brian. Yet, she did not ask any questions knowing that Mr. O'Brian lived within close proximity to her.

[38] In cross-examination, Ms. Antoine was referred to paragraph 3 of her statement of claim where she said that she rented from Mr. Cadet and that this arrangement continued until 2011 and asked whether this did not conflict with paragraph 18 of Mr. Cadet's witness statement where he says that he was not aware when Ms. Antoine took up occupation of the house and whether it was his mother who had negotiated the rental with Ms. Antoine. Her response was that the gentleman who was collecting the rent said he was collecting for Mr. Cadet's mother. Then when asked whether she rented from Mr. Cadet, she said no not from him, but she knew she was renting from family.

[39] She was asked whether she knew that the parcel she intended to purchase contained two lots and she responded, 'I was not aware.'

[40] Ms. Antoine was asked whether she had represented to the Court in her witness statement that she rented a house and land. At paragraph 2 she said that she began to rent a piece of land together with a house on it. Ms. Antoine responded that she was renting the house and if she had said house and land that was an error. Asked if this was then incorrect, she said it was an error.

- [41] She was then asked whether it is correct that she was buying the house and the land it was situated on and she said yes. Asked if she now understood that there was another house on the property occupied by Mr. O'Brian, she said yes.
- [42] Asked if it was her understanding that the property also contained a wooden house occupied by Mr. O'Brian, she said she did not know because she knew she was buying her own piece of property. She did not know about Mr. O'Brian's property. This suggests that Ms. Antoine thought what she was buying was where she occupied.
- [43] It was suggested to her that it was clear that what she was buying was the house where she lived and the land that it was situated on and she said yes.
- [44] She admitted that she now knew that the parcel was 211 and that based on all her enquiries that Mr. O'Brian also lives on parcel 211.
- [45] When it was put to her that she was asking the Court to declare her the owner of Parcel 211 but Mr. O'Brian occupies a house on 211 she said she was also claiming what she bought, Parcel 211. This seemed inconsistent with her saying that she knew that what she was buying was only where her house was.
- [46] She admitted to knowing Mr. O'Brian for more than 15 years and was the aunt to his son. Asked when Mr. O'Brian began occupation of the house on Cemetery Road, she said she did not know although earlier in cross examination she had given a response to that question.
- [47] Ms. Antoine was again referred to paragraph 10 of her statement of claim where she says that Mr. O'Brian began occupying the house on the property after she had completed the purchase which suggests that he started living there after May 2013. She admitted this was what it suggested but said that Mr. O'Brian was living there before that.
- [48] Ms. Antoine was referred to paragraph 4(2) of her reply which states that Mr. O'Brian began renting in 1998; to paragraph 4(4) of her reply which states that

at the lawyer's office she then realised that his lot was also up for sale; paragraph 9 of her witness statement where she says she knows the lots in Vieux Fort are small and she thought there were two different parcels of land; paragraph 27 of her witness statement that it was in or after 2006 that Mr. O'Brian came to live in the house.

[49] It was suggested to Ms. Antoine that these give different times when Mr. O'Brian started living in the house on parcel 211 which she agreed with but said she knew he started living there about 2006. She said the reference to 1998 was not correct.

[50] Ms. Antoine admitted that when she moved into the property in 1995, there was a house there where Mr. O'Brian now occupies. There was a small fence. She was asked whether the fence separated the place where she lived and where Mr. O'Brian lived, she said not completely. She agreed that the wooden structure was blocking off the fence to close off the area. When asked if that was the same wooden structure she had referred to in paragraph 27 of her witness statement she said yes and agreed that what Mr. O'Brian had done was to continue the fence where the old 'hut' was. She did not dispute that this separated the two properties.

[51] Finally, Ms. Antoine agreed that it was correct that when she spoke to Mr. Cadet she knew that what she was agreeing to buy was the place she occupied.

[52] Having analysed Ms. Antoine's evidence I find the following:

- (a) When Ms. Antoine started renting the house on the side of Parcel 211 facing Giraudy Street, she was aware that there was another house with its entrance on Cemetery Street;
- (b) She thought that the two areas where the house occupied were two separate lots as she accepted that lots in Vieux Fort were small. If this was what she thought, then this supports the conclusion that what she thought she was purchasing was her 'lot';
- (c) That what Ms. Antoine agreed to purchase was the house she occupied and the land it was on. She did not think she was purchasing the other house

occupied by Mr. O'Brian and therefore did not intend to purchase the whole of Parcel 211;

- (d) The Agreement for Sale dated 18th May 2011 referred to 'a piece of land situated in the town of Vieux Fort-property contains one wooden house erected on premises and is included in this agreement'. It then refers to the Block and Parcel Number 1217C 212 which I accept should be Parcel 211;
- (e) Ms. Antoine admitted that what she was buying was the place she occupied- which is not the whole parcel of land;
- (f) Ms. Antoine never agreed to purchase the entire area of land known as Parcel 211;
- (g) When Ms. Antoine went to the lawyer's office she would have known that Mr. Cadet was selling land to Mr. O'Brian as well;
- (h) Ms. Antoine paid the full purchase price to Mr. Cadet of \$10,500.00 by 3rd May 2011.

[53] I do not believe Ms. Antoine that she thought she was purchasing the whole of Parcel 211 when at the time she purchased, she would not have been aware that where Mr. O'Brian occupied was also Parcel 211. As she said she thought there were two separate lots. Therefore, she could only have thought she was purchasing the lot she occupied.

Mr. Cyril Cadet

[54] Mr. Cadet in his defence avers that he intended to sell a portion of Parcel 211 to Ms. Antoine which is the portion of land she occupied and that he never intended to sell the entire Parcel 211, and that the reference to Parcel 212 in Ms. Antoine's Agreement was a genuine mistake.

[55] Mr. Cadet alleges that Mr. O'Brian began occupying a wooden structure which was his mother's residence in 1998 prior to him entering into Ms. Antoine's Agreement. It was his intention to sell the portion of Parcel 211 which was occupied by Mr. O'Brian to him. Further, Mr. Cadet alleges that he entered into an Agreement for Sale with Mr. O'Brian for the sale of the wooden structure and Parcel 211 on 15th February 2011 prior to entering into Ms. Antoine's.

- [56] Mr. Cadet for his part denies that he is liable for any of the relief claimed by Ms. Antoine and prays that her claim be dismissed with costs.
- [57] Mr. Cadet in 1963 migrated from Saint Lucia to the United States Virgin Islands. He visited Saint Lucia often thereafter. In 1977, Mr. Cadet migrated to the USA where he lived for about 44 years according to him. During the time he lived in the USA, he did not visit Saint Lucia frequently but after his mother's death in 1995 he visited Saint Lucia at least once a year. From about 2016, he has resided in Saint Lucia permanently.
- [58] According to Mr. Cadet's evidence he applied for Letters of Administration for his mother's estate in about 2011. He did not exhibit the grant of Letters of Administration, but this evidence was not challenged.
- [59] He says he grew up in the house where Mr. O'Brian occupies. That house belonged to his mother. He says the house which Ms. Antoine occupies belonged to a Miss d'Auvergne who was their neighbour and he is not aware how Ms. Antoine began paying his mother rent for the house.
- [60] He says when he left Saint Lucia, he was under the impression that the lot where Ms. Antoine occupied and the lot where Mr. O'Brian occupied were two separate lots. He says that he is not aware of nor can he ascertain the exact date or year when Ms. Antoine took up occupation of the wooden house which she now occupies, nor can he say that it was his mother who negotiated the rental with Ms. Antoine. He was not in Saint Lucia when these events would have taken place and he did not ask his mother about them. He says there was never a written agreement between he and Ms. Antoine with regards to tenancy of the wooden house. He says as far as he is aware, his mother had someone collecting rent on her behalf.
- [61] In 1998, Mr. O'Brian took up occupation of the house which had belonged to his mother. Likewise, he did not have any written agreement with Mr. O'Brian with regards to tenancy of that wooden house. He says as far as he is aware, Mr.

O'Brian paid rent to his cousin. He says he was never responsible for collecting rent from Ms. Antoine and Mr. O'Brian since he lived overseas.

[62] After Hurricane Tomas in October 2010, he was informed that the two wooden houses belonging to his mother were damaged and required repairs. In November 2010, Mr. Cadet flew to Saint Lucia to assess the damage to the houses.

[63] On his first visit to Vieux Fort, he met with Mr. O'Brian and noted that he had fixed the structure to make the house habitable. He says he discussed with Mr. O'Brian the possibility of him purchasing the property where he occupied. He says Mr. O'Brian expressed interest in purchasing both his property and that of Ms. Antoine. He says he informed Mr. O'Brian that it would not be fair for him to purchase both lots and that since Ms. Antoine occupied a spot she should be given the option to purchase the spot where she occupied for many years.

[64] Mr. Cadet's evidence is that in about February 2011, he agreed to sell the property where Mr. O'Brian occupied to him for \$25,000.00. The deposit of \$10,000.00 was paid to him by way of a car which he accepted in lieu of the cash deposit. Mr. O'Brian then had to pay the balance of the money by way of instalments. He says he informed Mr. O'Brian that the agreement which they drafted was temporary and he would require his attorney to finalise the transaction with him.

[65] On his second visit to Vieux Fort, he met with Ms. Antoine for the very first time since she had been renting on the property. He says she approached him and told him she had heard that the properties were for sale and expressed an interest in purchasing the spot which she occupied. He agreed to sell the lot which Ms. Antoine occupied.

[66] He says he discussed the matter with his attorney at the time who was preparing the Letters of Administration on his behalf. Sometime in early May 2011, Mr. Cadet says he, Ms. Antoine and Mr. O'Brian visited his lawyer's office to discuss the Agreement for Sale. He instructed his lawyer to prepare Agreements for Sale

to transfer the spot which Ms. Antoine and Mr. O'Brian occupied. His lawyer requested that they pay a deposit towards the legal fees in order to have the Agreements for Sale prepared but none of them had the funds and the Agreements were not prepared on that day.

[67] Mr. Cadet says he informed his lawyer that he agreed to accept a car in lieu of the \$10,000.00 deposit from Mr. O'Brian. The lawyer requested the documents for the car from Mr. O'Brian who could not produce title. The lawyer told Mr. O'Brian to return to her when he had the title to the car and the legal fees.

[68] Since the Agreements for Sale were not prepared by his lawyer before he left to go back to New York, he gave Ms. Antoine and Mr. O'Brian each an Agreement. He says he rewrote the agreement for Mr. O'Brian using the purchase and sale agreement and he inserted the original date that was written on the first agreement. I note that this first agreement was not part of his pleaded case and does not feature in his defence at all.

[69] Both Ms. Antoine and Mr. O'Brian were given Mr. Cadet's bank details to deposit the money on his account. He says Mr. O'Brian's deposits were not always on time. Shortly before Ms. Antoine finished paying for the land, Mr. Cadet says he became aware that it would be difficult to provide Ms. Antoine with title as both lots had the same parcel number. Mr. Cadet says he did not realise that there were no clear boundaries to identify and/or separate the lots.

[70] Mr. Cadet says he worked at the Post Office in Vieux Fort between 1961 and 1963 and always knew the two houses to have two separate addresses, Ms. Antoine's was on Giraudy Street whilst Mr. O'Brian's was on Cemetery Street. He says when he spoke to his lawyer, she did not inform him that it would have been a problem to transfer the parcel of land to Ms. Antoine and Mr. O'Brian, and he did not know that issue would have arisen.

[71] Mr. Cadet says that although he did not hire a new lawyer after he and his previous lawyer had severed their relationship, he still relied on the advice that she had given him which is that it was possible to sell the two lots to Ms. Antoine

and Mr. O'Brian. He thought it would not have been a legal issue to execute two agreements of sale to Ms. Antoine and Mr. O'Brian.

[72] Mr. Cadet says he was not aware of the system of land registration which seemed now to be different to what he knew when he lived in Saint Lucia. He says at the time he entered into the two agreements he still lived in the USA and he was not aware of what changes the new system made.

[73] According to Mr. Cadet, close to the time when he knew Ms. Antoine was scheduled to finish payments for her spot he sent persons to undertake searches at the Land Registry to get the documents which would enable him to identify the boundaries for her spot. After several searches, he was informed that there was no record of a parcel number for the spot Ms. Antoine occupied. He also tried to get information from the Catholic Church and the Post Office but that was not of assistance.

[74] Mr. Cadet says he also engaged a surveyor hoping for a solution but got no results. He says he put effort in trying to subdivide the land after he found out that the lots occupied by Ms. Antoine and Mr. O'Brian were actually one property. He does not say what the outcome of those efforts were.

[75] Mr. Cadet says there was never any intention to wilfully or deliberately sell Parcel 211 to both Ms. Antoine and Mr. O'Brian. His intention was to sell the spot which they each occupied to them since they had both occupied the respective lots where they lived for over ten (10) years.

Analysis of Mr. Cadet's evidence

[76] In relation to the error in the parcel number noted in Ms. Antoine's Agreement, it was suggested to Mr. Cadet that the error was as a result of his lawyer putting the wrong parcel number on documents she had prepared. He said he did not know about his lawyer, but he was the one who had inserted the parcel number.

[77] It was then suggested to Mr. Cadet that it was reasonable to conclude that he arrived at the use of parcel 212 in Ms. Antoine's Agreement because of the

reference to 212 in the documents from his lawyer which Mr. Cadet now said was correct. He maintained that he had made a mistake in the parcel numbers and that he really meant parcel 211 suggesting as he did earlier that the error was not because of his lawyer.

[78] In cross-examination, Mr. Cadet admitted that he was told by Mr. O'Brian that he had started occupying the house in 1998, but he agreed that he could not tell the Court when Mr. O'Brian actually took up occupation. He was referred to his evidence where he said that Mr. O'Brian wanted to purchase both his lot and Ms. Antoine's and Mr. O'Brian's evidence that it was Mr. Cadet who told him to buy both spots. He responded that he would not be surprised but he did not remember that this was the conversation. He was referred to Mr. O'Brian's evidence at paragraph 7 of his witness statement, and he responded saying he was not denying what Mr. O'Brian had said but he just did not remember it to be that way. He agreed though that, one of the two statements had to be false.

[79] Mr. Cadet after being pressed admitted that the lawyer had told him that she got paid by Ms. Antoine so him saying in his evidence that neither party was in possession of the funds on 13th May 2011 could not be correct. He claims that when the money was given to the lawyer, he had already left the office, so he does not know that it was paid on that date. He was adamant that it was not true that Mr. O'Brian was the only one who did not pay the lawyer but then admitted that he did not see him make a payment to the lawyer. He insisted that the reason the agreements for sale were not prepared was because neither of the parties had the funds despite having seen the receipt where Ms. Antoine paid the \$300.00 as legal fees for the agreement preparation on 13th May 2011.

[80] Mr. Cadet was asked whether he saw any reference to a car in Mr. O'Brian's Agreement and he said no. He also agreed that there was no reference to a deposit by way of a car in his defence. Mr. Cadet said Mr. O'Brian did give him title to the car and he gave him a change of ownership when he got title, but he agreed that this was not before the Court. He could not remember the date on the change of ownership; he claimed that he could not put the document in evidence because he was not in possession of the car at the time as he had

already given it to someone for parts. He had given that person all the documents. I did not believe this story at all.

[81] Mr. Cadet was referred to Mr. O'Brian's Agreement and asked whether this was the agreement he entered into in February 2011 and he responded 'yes, it is still the same agreement". He insisted this was the agreement he had entered into with Mr. O'Brian.

[82] He claimed that he was in possession of the car for a while before he entered into the Agreement with Mr. O'Brian. He agreed that the agreement made no reference to a car as a deposit. Asked whether he wrote the agreements himself after they were not prepared by his lawyer and that that would have been after May 2011, he said that was incorrect. When he was asked the same question, he agreed that it would have been after May 2011 that he wrote the agreements. It was suggested to him that the Mr. O'Brian's Agreement did not exist in February 2011 but was done after the agreements were not done by his lawyer and he said no.

[83] In relation to the question why he called the agreement he had made in February 2011 temporary, Mr. Cadet said because it was written on a yellow pad and when he got the lease agreement, he wrote it up. He agreed though, that this was not part of his witness statement and that this information would have been important. He continued to deny that the February 2011 Agreement was made after Ms. Antoine brought the claim.

[84] Mr. Cadet agreed that the evidence did not show that Mr. O'Brian had paid the amount of \$25,000.00 to him nor did he show any receipt for the \$10,000.00 deposit.

[85] He could not remember the name of the surveyor he says he engaged after Ms. Antoine made her final payment. He said Mr. O'Brian finished paying the property in 2018, thereabout and then said he was not sure. He admitted that he never showed Ms. Antoine the boundaries of where he was selling to her.

[86] In re-examination, Mr. Cadet said the \$10,000.00 reflected in Mr. O'Brian's Agreement was reference to the vehicle which he treated as cash. He said he understood that he was selling Mr. O'Brian Parcel 211 which when he looked at the map pointed towards where Mr. O'Brian was and 214 was closer to where Ms. Antoine was. This evidence was confusing as Parcel 214 never featured in the matter.

Mr. Mervin O'Brian

[87] Mr. O'Brian for his part says Mr. Cadet was responsible for some land in Vieux Fort on which there were two wooden houses one of which was on Cemetery Road which he started renting in 1998. He alleges that he does not know when Ms. Antoine started renting from Mr. Cadet nor when the Agreement for Sale was entered into, but he is aware that there was some agreement between them for the house and a portion which Ms. Antoine occupies on Giraudy Street.

[88] According to Mr. O'Brian, on 15th February 2011, he entered into an agreement with Mr. Cadet to purchase the wooden house and the lot he occupied known as 6 Cemetery Street and recorded in the Land Registry as Block and Parcel 1217C 211 for \$25,000.00. He made a deposit as was requested and completed payment for the land on 5th February 2018.

[89] Mr. O'Brian avers that having completed the purchase and pending preparation and receipt of the Title Deed, he commenced exercising his rights as owner of the property for which he had paid in full. Mr. O'Brian avers that he is in lawful occupation of Parcel 211 having rented a house on the land, having entered into an agreement with Mr. Cadet for purchase of same and having paid the agreed purchase price in full.

[90] Mr. O'Brian like Mr. Cadet denies that he has caused any loss or damage to Ms. Antoine and that she is entitled to the relief she seeks. He says the claim ought to be dismissed against him with costs.

[91] Mr. O'Brian's evidence is that he knows Ms. Antoine for over seventeen years. He says he met Mr. Cadet in about September 2010 when he came to the area.

Mr. Cadet was staring at his house, and he asked him what he wanted. Mr. Cadet informed him that he was owner of the house. At that time, he had been renting the house for about twelve years and paying rent to one Raymond George on behalf of the owner whom he never met.

[92] He says he and Mr. Cadet discussed the possibility of him purchasing the house. Early in 2011, Mr. Cadet came to his home again and told him he had two pieces of land for sale, and he offered him both pieces. At the time he was in a relationship with Ms. Antoine's sister, and he suggested that Mr. Cadet sell Ms. Antoine the piece she occupied.

[93] He and Mr. Cadet agreed on the price of \$25,000.00. According to him, Mr. Cadet drew up a Purchase and Sale Agreement dated 15th February 2011 which they both signed. He paid a deposit of \$10,000.00 and agreed to pay the balance in monthly instalments of \$400.00.

[94] Mr. O'Brian says his Agreement says Block and Parcel 1217C 211 but he and Mr. Cadet were clear as to that was being sold and purchased. He was buying where he lived which fronted Cemetery Street and went back towards Bridge Street which is where Mr. Cadet lived as a child with his mother prior to her buying the smaller lot with the front on Giraudy Street. The Map Sheet⁷ exhibited confirms the L shaped lot with a front facing Giraudy Street and one facing Cemetery Street.

[95] According to Mr. O'Brian, the portion of land he occupies had an old kitchen built along the northern boundary which he broke down after it fell into a state of repair. The fence is still the same way as it was.

[96] He says when he began renting the house Ms. Antoine was already renting the other house where she is now. Sometime after making and signing the agreement with Mr. Cadet, Mr. O'Brian says he became aware that Mr. Cadet

⁷ p. 55 of TB.

had in fact agreed to sell the smaller parcel of land facing Giraudy Street to Ms. Antoine for about \$10,000.00.

- [97] According to Mr. O'Brian, he completed his payments of the full purchase price on 3rd February 2018 and has been waiting to get title to the parcel of land.

Analysis of Mr. O'Brian's evidence

- [98] Mr. O'Brian admitted that Ms. Antoine was already living on the land when he came to live there. He agreed that having said he knew Ms. Antoine for over 17 years that would have been from about 2004. He says Mr. Cadet told him he was selling both pieces of land for \$35,000.00. He was told that he did not put that in his witness statement and his response was that he did not have to mention that. This is also contrary to what Mr. Cadet says in his evidence.
- [99] When it was put to Mr. O'Brian that Mr. Cadet had said in his evidence that it was he who offered to buy the whole property and consequently, someone must not be telling the truth, he said perhaps Mr. Cadet had forgotten. He agreed however that the two positions could not be the same.
- [100] When asked if he intended to purchase where Ms. Antoine occupied then his intention was to put her out, he very boldly said yes. This response is more consistent with him having made the approach to buy the whole area including where Ms. Antoine occupied.
- [101] Mr. O'Brian admitted that he offered Mr. Cadet a car as a deposit on the land and the lawyer asked him to produce documents showing ownership and that he never did because he did not have ownership documents. He admitted that he said nothing about this deposit by way of a car in his pleadings or witness statement.
- [102] He agreed that Mr. Cadet had no knowledge of when he started occupying the land and that he was only relying on what he told him.

- [103] Mr. O'Brian admitted to breaking down the old kitchen but he denied that he erected a shed closer to where Ms. Antoine lived than where the hut was. He says he began putting concrete in about 2019.
- [104] Mr. O'Brian denied teaming up with Mr. Cadet. He insisted that this agreement was not done to give him an advantage over Ms. Antoine. He agreed that what he intended to purchase from Mr. Cadet was an old wooden house with the spot it was on. He admitted that he had started to convert the house into concrete.
- [105] Mr. O'Brian denied that the land was small and said the lot was about 700 square feet and then he said he could not remember. He denied that he was the creator of the idea of a smaller or bigger piece of land but admitted that he had drawn the line seen on the map sheet which seemed to separate the parcel into two lots.
- [106] Mr. O'Brian said he was not aware that the receipts exhibited by him evidencing payment of the purchase price showed a total of \$5,700.00 and agreed that if the deposit was added the total would be \$15,700.00. That figure was less than the purchase price stated in his Agreement. However, there is a receipt dated 5th February 2018 which suggests that payments were completed on that date.⁸
- [107] Asked about the visit to the lawyer's office, Mr. O'Brian said he thought he had gone to the lawyer's office to get an agreement for sale prepared and admitted that he did not pay the \$300.00 legal fees. He denied that he told the lawyer he would return when he had the money and then said he was not sure if he told her he would return.
- [108] He said at the time he went to the lawyer he did not have an agreement for sale with the lawyer, but he had one with Mr. Cadet. He said he signed two agreements for sale with Mr. Cadet-one on yellow paper and the one he now had. At first, he said one and then changed his answer to two.

⁸ p 57 of TB.

[109] Mr. O' Brian admitted hearing Mr. Cadet talk about the agreement on yellow paper during the trial and insisted that this was the truth. He agreed that he had said nothing about a yellow paper in his witness statement. When asked whether he told his lawyer about the yellow paper he said that this was not something he had to tell his lawyer. He agreed that Mr. Cadet had prepared the Agreement for Sale because the lawyer did not prepare it and that was in May 2011. However, he disagreed that the agreement had to be dated a date after May 2011.

[110] Having analysed Mr. Cadet's and Mr. O'Brian's evidence I find the following:

- (a) Mr. Cadet did not intend to sell the entire lot of land – Parcel 211 to Ms. Antoine.
- (b) Mr. Cadet's evidence that he had an agreement with Mr. O'Brian on a yellow paper which he then rewrote is doubtful. Mr. Cadet did not allude to this yellow paper agreement in his pleadings and cannot now raise this in his evidence. I reject this evidence.
- (c) Mr. Cadet did not seem to have much knowledge of the rental arrangements of Mr. O'Brian and Ms. Antoine, and clearly relied on Mr. O'Brian for information;
- (d) In May 2011, when Mr. Cadet visited the lawyer with Mr. O'Brian and Ms. Antoine, the intention was to have two Agreements for Sale done in relation to the two purchases;
- (e) I do not accept that there was any Agreement for Sale made between Mr. O'Brian and Mr. Cadet on 15th February 2011 and I find that this Agreement for Sale was produced with that date so that it would be first in time. It is also curious that this Agreement in February 2011 had the correct Parcel Number 211 when Mr Cadet said in his evidence and cross-examination, that it was in April 2019 that he realised the error in the parcel number.
- (f) Mr. O'Brian did not start living on Parcel 211 in 1998 but sometime after 2006. I accept Ms. Antoine's evidence of when he commenced living on Parcel 211.
- (g) Mr. O'Brian initially approached Mr. Cadet to buy the spot which he occupied and where Ms. Antoine occupied. I believe Mr. Cadet when he says that he suggested to Mr. O'Brian that Ms. Antoine should be given an

opportunity to purchase where she occupied. Therefore, it was understood that what would be sold to him was simply where he occupied.

- (h) The receipts exhibited by Mr. O'Brian also suggest that what was being sold to Mr. O'Brian was the house and the portion of land it sat on.

Submissions and Analysis

- [111] It is trite law that for an agreement for sale to be enforceable, it must be in writing. In such a case as this where the claimant alleges a breach of contract, the claimant must prove that a valid contract exists between herself and Mr. Cadet.
- [112] It is also trite that in order for a contract to be valid the following elements must be present: (i) offer and acceptance; (ii) consideration, (iii) certainty of subject matter and (iv) capacity to enter into contractual relations.
- [113] In **Keith Garvey v Ricardo Richards**,⁹ the Court stated that for a contract to be valid and enforceable all essential terms governing the relationship of the parties must be incorporated therein. The subject matter must be certain. There must be positive evidence that a contractual obligation borne out of an oral or written agreement, is in existence.
- [114] The evidence presented confirms that Mr. Cadet made an offer to Ms. Antoine to purchase the house and land where she occupied and she accepted that offer. It is undisputed that there was consideration for the contract and that both parties intended to enter into contractual relations.
- [115] In relation to the certainty of the subject matter, Ms. Antoine's Agreement states that Mr. Cadet agreed to sell the property described as 'A piece of land situated in the town of Vieux Fort-Property contains one wooden house erected on premises and is included in this agreement.' It then states a Block and Parcel Number 1217C 212.

⁹ [2011] JMCA Civ 16.

[116] Whilst it may appear that this description is ambiguous or unclear, two things are apparent from the evidence: firstly, that Mr. Cadet admitted to having made an error in the block and parcel number and accepted that it should have been 1217C 211 and not 212 and secondly, although Ms. Antoine alleges that Mr. Cadet intended to sell her the entire Parcel 211, it is clear from her cross-examination that she knew that she was buying her piece of the land where she occupied. The very last question she was asked was whether she was clear that what she was buying was the 'place where she occupied' and she said 'yes'. This evidence coupled with Ms. Antoine's evidence that she thought that the land that she occupied and the land that Mr. O'Brian occupied were separate lots strengthen my view that she could not have thought she was buying anything more than where she occupied. I think it is fair to say that Ms. Antoine at the time she entered into her Agreement was clear as to what she was buying. It was not until 2019 when she made enquiries that she discovered that what she thought was two lots was actually one so she could not have thought she was purchasing the entire area including where Mr. O'Brian occupied. It is clear from the evidence of Mr. Cadet that he too only intended to sell to Ms. Antoine the house and the portion of land she occupied. I therefore find that Ms. Antoine would not be entitled to the entire Parcel 211 as she has prayed for. She only intended to purchase the portion of land which she occupies.

[117] I agree with Counsel for the claimant that the evidence is clear, and Mr. Cadet admits that the reference in Ms. Antoine's Agreement to Parcel 212 was an error which he says he did not intend. This is therefore not an issue which the Court is required to resolve. I agree with Counsel that it was the clear intention of both Mr. Cadet and Ms. Antoine that they were dealing with Parcel 211 and not 212 which in any event did not belong to Mr. Cadet or his mother. I add further that there is no pleading by any of the defendants suggesting that Ms. Antoine's Agreement should be invalidated based on this mistake.

[118] Counsel for the claimant addresses Mr. O'Brian's Agreement in some detail. Whilst I do not accept that Mr. O'Brian had any Agreement for Sale with Mr. Cadet in February 2011, even if he did have an agreement, it would not affect Ms. Antoine because it would solely be in relation to the house and the spot

which he occupied. Ms. Antoine's interest which she has acquired in relation to the house and the spot it occupies would not be affected. I therefore do not think that I need to discuss Mr. O'Brian's Agreement further since I have concluded that it did not relate to the entirety of Parcel 211 based on the evidence as discussed above.

[119] Based on my findings in relation to Ms. Antoine's Agreement and what it related to, the house and spot she occupied, the issue of the backdating of Mr. O'Brian's Agreement does not affect Ms. Antoine's acquired rights in Parcel 211. Despite Mr. O'Brian's Agreement stating 'land and wooden house Lot No. 1217C 211, when taken together with Mr. Cadet's and Mr. O'Brian's evidence, this could only be referring to the spot Mr. O'Brian occupied. I do not agree with Counsel for the claimant that this relates to the entire Parcel 211. I do not ascribe much weight to the fact that the documents from the lawyer refer to Block and Parcel 1217C 211 and that this must be referring to the entire parcel as this does not square with the evidence of the parties even that of the claimant. I believe Mr. O'Brian was attempting to assert rights to the entire Parcel 211 but his evidence and that of Mr. Cadet left me no doubt that this was never the intention. Certainly, Mr. Cadet thought that the spaces occupied by Mr. O'Brian and Ms. Antoine were two separate lots and I believe that he did not intend to sell the entire Parcel to either Ms. Antoine or Mr. O'Brian. Counsel for the claimant cannot in the face of Ms. Antoine's own evidence in cross-examination and in her witness statement maintain the position that Ms. Antoine's position has always been that she purchased the entirety of Parcel 211 although she did not know where the boundaries were.

[120] Mr. Cadet has admitted that he has failed to execute a Deed of Sale to effect the transfer to Ms. Antoine. I have found that the common intention between Mr. Cadet and Ms. Antoine was that she was purchasing and he was selling the house and the land where Ms. Antoine occupied on Parcel 211 and not the entire Parcel 211.

[121] It is the case that when Ms. Antoine paid in full in May 2013, she became entitled to have a deed of transfer executed in her favour so that she could become the

legal proprietor of the property she was purchasing. Until then she has an equitable interest in the property.

[122] In her evidence Ms. Antoine said that she had contacted a licensed land surveyor and Crown Lands and they both indicated to her that the parcel of land is too small to be subdivided between two different owners and that no subdivision would be approved given that the land is too small being less than 2,000 square feet.

[123] The land register shows that Parcel 211 is less than 0.02 hectares. Counsel for the claimant submits that it is clear that only one person can own Parcel 211 because of its size. Counsel suggests that the question for the Court is given the size of Parcel 211 and the fact that it is too small to accommodate two different households, two different septic tanks, have the requisite setbacks etc, which of the two holders of the agreements for sale should be declared the owner of Parcel 211.

[124] Given that I have found that Ms. Antoine only intended to purchase the house and the spot she occupied, the Court is not required to decide who is entitled to the entire Parcel 211. Further, the claimant has said that she consulted with persons who gave indications in relation to the feasibility of the Parcel being subdivided. It is interesting that Ms. Antoine sought advice as to subdivision of the Parcel 211 when according to her she had intended to buy the entire Parcel 211. Why then would there be a need for subdivision? In any event, Ms. Antoine whilst making these statements in her evidence and her pleadings produced no evidence to substantiate what she says. The Court has no evidence before it that a subdivision may not be considered at all. That would have necessitated some supporting evidence.

[125] The Court is not in a position absent any evidence to that effect except for the claimant's own evidence of what she was told, to make the findings which Counsel suggests should be made. The Court does not have to consider what payments were made by Ms. Antoine or Mr. O'Brian as they were not buying the same property.

[126] In submissions, Counsel for Mr. Cadet suggests that he has no aversion to executing a Deed of Sale in favour of Ms. Antoine once a determination is made by the Court regarding the portion of the Property she is entitled to. On the other hand, Counsel for Ms. Antoine invites the Court to find that the claimant is entitled to a declaration that she is the owner of Parcel 211 having proved such entitlement especially since the Development Control Authority will not approve a subdivision of the parcel.

[127] Again, I must make the point that I have no evidence that a subdivision will not be approved as submitted by Ms. Antoine's Counsel and this would be pure speculation on the Court's part.

[128] Mr. Cadet has failed to execute the Deed of Sale in Ms. Antoine's favour and as such he has breached his contract with her and he must proceed to remedy that breach.

Conclusion

[129] Whilst I agree that Ms. Antoine was very consistent in her evidence, the inconsistency showed in one area which was material to the determination of this matter, that is what she really intended to buy from Mr. Cadet. As discussed above, it is clear and she admitted that she intended to buy the house and the spot she occupied and not the whole Parcel 211. It is much easier to say that she intended to purchase the entire Parcel 211 because resolution of this matter would be much easier but that would go against the weight of the evidence.

[130] In relation to the defendants, their evidence lacked consistency and in particular, I did not believe Mr. O'Brian's evidence which was shown to be inconsistent at times and blatantly untrue at others. The evidence does not in any way support Mr. O'Brian's defence that he was purchasing the entire Parcel 211. I am of the view that Mr. Cadet made a genuine error in Ms. Antoine's Agreement as relates to the parcel number, and that he genuinely thought that where Ms. Antoine and Mr. O'Brian occupied were two separate lots. I however find based on the evidence, that in relation to Mr. O'Brian's Agreement, that Mr. Cadet was not entirely truthful. Perhaps this is a case about the parties just seeing how they

can come out of this situation unscathed. It would be much simpler if both parties were purchasing the entire lot, first in time would definitely win but this matter is a little more complicated than that and more so because of the nature of the property and its occupation.

[131] Given the pleaded case before the Court, I find that the claimant has not proved on a balance of probabilities that she is entitled to Parcel 211 and to the relief that she seeks. Her claim must therefore fail in light of her pleaded case. This outcome does not move the matter any further for any of the parties to the claim and I am of the view that the parties now need to engage in further discussions with a view to coming up with a mutually acceptable arrangement as regards occupation/ownership of Parcel 211. Whilst I will dismiss the claim, I believe that the first defendant must now take steps to survey and explore subdivision of Parcel 211, if possible. That to my mind is critical.

[132] In light of the foregoing, I make the following orders:

1. The Court declares that the claimant has an equitable interest in the house and the portion of Parcel 211 which she occupies, such that she has acquired an overriding interest in that portion of the said parcel.
2. The parties are encouraged to have discussions to seek a possible long-term solution in this matter.
3. Given the Court's findings in this matter, I make no order as to costs.
4. There being no counterclaim by the second defendant, the Court cannot make any order in relation to any interest which he may have in Parcel 211.

[135] I thank Counsel and the parties for their patience in awaiting the delivery of this judgment and apologise for any inconvenience caused.



Kimberly Cenac-Phulgence
High Court Judge

By The Court

Registrar