

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2019/0457

BETWEEN:

ANTHONY GREER
(AS EXECUTOR OF THE ESTATE OF JOSEPH JEFFERS DECEASED)
Claimants

-and-
(1) CONSTRUCTION PRODUCTS LIMITED
(2) MYLES CODRINGTON

Defendants

Appearances:

Mr. Sylvester Carrott for the Claimant

Mr. Wendell Alexander for the Defendant

.....
2024: July 9;

October 7.
.....

JUDGMENT

[1] **BYER, J.:** This claim is one of some vintage, having been filed since 2019, and is a straightforward claim for arrears of rent and mesne profits arising out of a lease agreement entered into between the claimant as executor and the defendants or in the alternative damages for use and occupation pursuant to a sale and purchase agreement.

[2] The claimant's claim is as follows:

- (1) Arrears of rent of US\$96,000.00 and mesne profit of US\$32,000.00 under a business lease-purchase agreement dated 6 October 2011.
- (2) Or alternatively damages for use and occupation at US\$8000.00 per month from September 2015 under a sale and purchase agreement dated 16 March 2015.
- (3) Possession of the land situated and known as the block-making plant and contiguous land, namely Registration Section: South Central, Block 142088 A, Parcel 1062.
- (4) Such further and other relief as is necessary.
- (5) Costs.

[3] At the trial of the matter, it became clear that the claim for possession was no longer being pursued owing to the subject property being sold by the claimant some three months before trial. On what

appeared to have been the basis of this sale, the defendants filed an application before this court on 3rd July 2024 purporting to claim a beneficial interest in the property with a counterclaim seeking specific performance of the sale and purchase agreement. This application was withdrawn by the defendant and the matter proceeded to trial on the claim as filed.

Background

- [4] The claimant is the executor of the estate of Joseph Jeffers, the decedent, who died on 15th January 2011. The decedent owned and operated a business known as Midland Business Supplies registered under the laws of Antigua and Barbuda. The business concerned the making of blocks, and the land on which the company operated comprised a block-making plant, business buildings and a three-story apartment building. ("Midland Business Supplies").
- [5] The deceased bequeathed his estate to his daughter Ms. Yvonne Donna Jackson Jeffers, who is the sole beneficiary and resides in Canada. Ms. Jeffers instructed the claimant, as executor, to advertise the business and the associated lands for sale, which the claimant proceeded to do as part of administering the estate.
- [6] The claimant was engaged by the second defendant, in his capacity as director and representative of the first defendant, as being desirous of purchasing the business (machinery and stock) together with the lands upon which it was situated. The second defendant was, however, not in a position to purchase the business immediately. As a result, the parties entered into a lease-to-purchase agreement (lease-to-purchase agreement) on 6th October 2011, with the defendant for the purchase of Midland Business Supplies.
- [7] Under the agreement, the defendant was given a lease of the business for one year, with the option to purchase it upon the expiration of the lease term. The purchase was to include the business, equipment, and 2.2 acres of land, encompassing the business premises and apartments. The total purchase price was agreed at \$4,600,000.00, apportioned as \$3,500,000.00 for the real estate and \$1,100,000.00 for the business and equipment.
- [8] Importantly, in so far as is necessary to this court, clause 3 of the lease to purchase agreement provided the following:

Clause 3:

"... the purchaser shall pay to the vendor, on the last day of each month, commencing October 2011, a monthly rental fee of EC \$21,600.00 or (US\$8000) for 12 consecutive months in the first instance. The parties hereby agree that such monthly instalments of rent

shall not constitute payments towards the purchase price and shall not be deducted therefrom accordingly. Such rental fees shall at the end of 12 months aggregate EC\$259,200 or (US\$96,000). The full purchase price, that is to say, EC\$4,600,000 shall be paid to the Vendor no later than the completion date..." (my emphasis added)

- [9] Per **clause 8** the defendant purchased the undertaking and assets of the business on an "as is" basis. While **clause 9** made provision that all outstanding charges concerning water, electricity and telephone are to be paid by the claimant and thereafter be paid by the defendant. Under **clause 14** under the heading "**undertakings**" the defendant until the completion of the sale was mandated to keep all contents in good working order, in a state of repair and condition. Most importantly **clause 15** made it clear that the completion date was October 2012 at which time the purchaser was to make full payment to the vendor of the sum of EC\$4,600,000.00.
- [10] At the end of the completion of the lease, the defendants failed to complete the purchase of the property as agreed and requested an extension of time to do so. This extension was granted by the claimant, but the defendants still failed to fulfil their obligations under the agreement. Nevertheless, the defendants remained on the property without paying rent. Consequently, the claimant served a Notice to Quit on the defendants on 31st May 2013, which expired on 31st July 2013. On the date of the Notice to Quit, the defendants made a payment of EC\$100,000.00 (approximately USD \$37,038.00) to the claimant. The defendants vacated the property on 30th November 2013.
- [11] Portions of the lot of land that made up the estate included Block 14 2088A, Parcels 133, 425, 486 and 825. These lots were subsequently combined and registered as South Central Block: 14 2088A, Parcel: 1062. The purpose of the mutation was to isolate and remove the three-storey residential building which would not form part of any subsequent agreement.
- [12] Thereafter, the business was advertised for sale and remained on the market for over one year unsold. Having been on the market unsold, the claimant and the defendant entered into a new agreement on 16th March 2015 (the purchase agreement) where the claimant agreed to sell the defendant the business for a value consideration of EC \$1,000,000.00. The completion date of this agreement was 6 months after the date of the purchase agreement with the option to extend with the relevant party being notified in writing.
- [13] In so far as is relevant to these proceedings, **clause 2** of the purchase agreement stipulated that the full purchase price would be paid in incremental instalments. The first instalment was a deposit of

EC\$100,000.00, followed by a further payment of EC\$240,000.00 upon execution of the agreement. An additional EC\$300,000.00 was due within three months, with the remaining balance payable before the completion date. Notably, the agreement did not include a time-is-of-the-essence clause, although it allowed for an extension if agreed to in writing by both parties.

- [14] The payment of utility bills remained the responsibility of the claimant under the new agreement per **clause 7**. However, what is notable to this agreement is **clause 15** which reads as follows:

Clause 15

“This agreement supersedes and nullifies all prior agreements, understandings, negotiations and discussions, both oral and written between the parties hereto with respect to the sale of the property.” (My emphasis added)

- [15] Following this agreement, the defendants re-entered possession of the property in September 2015. Upon that re- entry, the second defendant was, as stipulated in the purchase agreement, expected to pay the full purchase price by September 2015, the date set for completion. In fact it is not disputed by the claimant that the second defendant paid EC\$800,000.00 towards the purchase price under the purchase agreement.
- [16] However, the claimant asserts two things, firstly, under the sale and purchase agreement, the defendant having remained in occupation after the issuance of the notice to quit having failed to pay rent, the claimant is due monies for not only arrears of rent but also for the period that he remained in occupation after the notice to quit. Secondly, the claimant further contends that the defendants breached the terms of the purchase agreement by failing to complete the purchase within six (6) months as required and that having remained in possession for 51 months beyond September 2015 without paying the full purchase amount, that they are also entitled to damages for use and occupation during that period. Which they calculate to be USD753, 896.00. ¹
- [17] In response to these contentions the defendants contend that firstly, under the lease-to-purchase agreement, there was never any arrears of rent due and owing to the claimant. That in fact there had been an oral rider to the lease-to-purchase agreement that if the machinery that was the subject matter of the lease was at any time not working and income could not be generated, the defendants were relieved from paying rent. They made no response to the fact of the continued occupation after the notice to quit. Secondly, they also contend that having paid EC\$800,000.00 toward the purchase price under the purchase agreement, they again entered into an oral agreement with the claimant to offset

¹ Calculated at a monthly occupation rent of USD\$8,000.00 a month for 51 months

the remaining EC\$200,000.00 by supplying blocks to customers who had previously made payments to Mr Jeffers for goods that had never been delivered during his lifetime.

[18] The second defendant maintained, therefore, that not only has the obligation been fulfilled in offsetting the EC\$200,000.00, thereby satisfying the full purchase price under the new agreement but that further and in any event he owes no money to the claimant. The purchase agreement having nullified any terms of any previous agreement as between the parties.

[19] During the hearing, both parties presented their own evidence, with no witnesses called on their behalf. The court directed counsel for both parties to submit written closing submissions by 31st July 2024. While the claimant's counsel complied, the defendant's counsel submitted their documents on 6th September 2024, over a month late without an application for an extension of time, meaning that the defendant's submissions are not properly before the court. As was stated in an obiter dicta statement by the court in **Copeland v Smith and anr**² there is an obligation on counsel to draw to the attention of the court authorities in aid or even against their case and to be of assistance to the court. This is an obligation that seems to be lost on many a counsel in this jurisdiction. Be that as it may, the claimant's submission is more or less a recital of his evidence before this court and for brevity only relevant parts of the submissions will be addressed in the court's law and analysis. The court will now review the evidence presented.

The Evidence

Anthony Greer

[20] The claimant in substantiating the claim for arrears of rent under the lease to purchase agreement, made it clear that arrears had accrued over the period of August to October 2012 for a total of USD\$24,000.00. Further by October 2012 when the purchase price would have been due under the lease to purchase agreement, the defendants failed to complete the same. However, upon the second defendant's request for an extension of time to pay the purchase price, he was given one, but during that extension, the defendants failed to pay the rent due and owing up to and including March 2013 to a total of USD\$80,000.00.

[21] This failure to pay, caused the claimant to serve a Notice to Quit on the defendant which expired on the 31st July 2013, however the defendant did not vacate the property until on or about 30th November 2013, whereby mesne profits had accrued up to that point in the sum of US\$32,000.00. Thereafter, the business and land were advertised for sale.

² [2000] 1 WLR 1371

- [22] The claimant maintained that the purchase agreement was entered into a year after the property had been unsuccessfully advertised for sale. It was upon the defendant's assurance that he had sufficient funds to purchase the business and the land it was situated upon that the claimant agreed to enter into the purchase agreement with the second defendant. The witness stated that this was however without prejudice to the discharge of the arrears of rent and mesne profits payable to the estate under the lease to purchase agreement, which was made clear to the second defendant. This he maintained under cross-examination. However, the claimant was unable to point to any document, as an attorney that had been issued to the defendant making this clear.
- [23] The witness stated that under the purchase agreement, the second defendant failed and refused to fulfil its contractual obligations and EC \$200,000.00 remains outstanding, but that in any event, that agreement is now at an end, the second defendant having failed to complete by the 15th of September 2015.
- [24] The witness agreed under cross-examination that the second defendant paid EC \$800,000.00 towards the purchase agreement with an understanding that the estate was prepared to offset the balance by the provision of the outstanding orders due to customers who had paid Mr Jeffers before his demise.
- [25] In that regard, the claimant admitted to having authorised seven customers whose sums would have been offset against the balance of the purchase price.
- [26] In disputing the figures put forward by the second defendant as representing the sums that he alleged were to be attributed to the purchase price under the purchase agreement, the claimant stated that the defendant provided 36 names on the spreadsheet of which only 12 persons' contacts were valid or available. The claimant therefore averred that this meant that the majority of the persons on the spreadsheet could not be substantiated or verified, and there were missing receipt numbers for at least 10 persons on the spreadsheet, thus there is no way of verifying the basis upon which those blocks were distributed. Of the 12 persons contacted none had indicated that they received cash from the defendant in lieu of blocks, despite Mr Codrington's aversion that he paid some of Mr. Jeffers customers' cash in lieu of blocks or cement.

- [27] Therefore, the claimant disputed the sums claimed by the second defendant as sums that should be given to his credit and declared that the defendant's spreadsheet was self-serving, fabricated, and can be refuted by EC \$100,000.00.
- [28] The claimant further stated that the defendant had at no time challenged the notice to quit or dispute the arrears of rent. Rather through his attorney by way of a letter dated 3rd November 2016³ acknowledged the indebtedness of US\$96,000.00 as well as his November 20, 2013 letter.
- [29] When questioned on the payment of utility bills by the second defendant as a means to offset the purchase price the claimant stated that though he asked the second defendant to pay the utility bills, this was not done which resulted in the supplies being disconnected in 2019.
- [30] In relation to the purchase agreement, the claimant made it clear that the defendant having remained in occupation after the completion date of 15th September 2015, stayed there for a period of 51 months. Of course, the claimant in making his claim on behalf of the estate admitted that credit needed to be given for the \$800,000.00 paid by the defendants and as such the balance owed to the estate under the lease to purchase and the purchase agreements was US\$239,704.00.

Evidence of the second defendant

Mr. Myles Codrington

- [31] In respect of the monthly sum owed in the aggregate, the defendant denied that it is so. He stated that his only obligation under the lease to purchase agreement was to pay rent for a period of 12 months. Having paid that money he owed no further sums and there was no agreement that he was to pay rent past that 12-month period.
- [32] The second defendant admitted that having come to an oral agreement with the claimant as to the purchase of the property at the time of the lease to purchase agreement concerning the purchase price of the property, he contended that he had communicated the issues of delay with his building project intended to provide for his rental income and meeting the terms of the agreement to purchase. It was therefore the claimant who agreed to allow the first defendant to pay what it could under the lease to purchase agreement until the housing project commenced. There was therefore no arrangement for the payment of rent after 5th October 2012, the effective end of the lease to purchase agreement.

³ See affidavit in opposition filed 14th February 2020, paragraph 21.

- [33] In direct contravention to the claimant's contention that the second defendant had not disputed the sum claimed for arrears, the second defendant told this court that immediately upon receipt of the Notice to Quit he disputed the sum claimed as arrears of rent. When pressed on cross-examination as to the reason for his leaving the property, the second defendant maintained that it had nothing to do with arrears of rent but rather that he had received the Notice to Quit and decided to leave.
- [34] He stated further that there was a verbal agreement between himself and the claimant that once the machine was down then he would not pay rent and there were times when the machine would be down for 3 consecutive months. He stated that the block-making machine was defective due to its age and broke down regularly, as it was in much need of repair which would have cost approximately US \$200,000.00. The second defendant therefore stated that it was this issue with the plant that caused him to fall behind in his prompt payment of the rental sums and his failure to meet the deadline to complete the lease to purchase agreement.
- [35] As it relates to offsetting the purchase price in the purchase agreement, the second defendant stated that from October 2011 to November 2013 he issued approximately 73,000 blocks to customers who had held accounts with Mr Jeffers, and it was agreed that these sums would be offset against the purchase price of the property, along with the sums he paid towards the water bill attached to the estate, which was approximately EC \$50,000.00.
- [36] The second defendant maintained that he did not repudiate the purchase agreement as he had made a payment of EC \$800,000.00 towards the purchase price of EC \$1,000,000.00 and by agreement between himself and the claimant, he honoured the previous arrangement made by Midland with customers who paid on account to offset the remaining EC \$200,000.00. The witness stated that in fact he had provided blocks and cements in the total sum of EC \$174,820.20⁴.
- [37] The witness states that he initiated a negotiation of offsetting the blocks against the purchase price and there was a correspondence between the parties⁵, dated 18th April 2016 where the claimant was advised that since entering into the agreement he had received invoices from customers valuing EC \$213,953.00 which represented 45,848 blocks and 562 bags of cement. He advised that as of that date, he had already given 4,610 blocks equivalent to EC \$20,857.00 to customers and that a total number of 41,800 blocks and 562 bags of cement with a monetary value of \$193,096.00 was outstanding⁶.

⁴ Attached copies of authorization letters and receipts and spreadsheets marked as MC1 in the further affidavit in opposition filed on 2nd March 2020.

⁵ Exhibited as MC2 of the affidavit in opposition filed on 14th February 2020.

⁶ Exhibited as MC2 at paragraph 21 of the Affidavit in Opposition filed on 14th February 2020.

[38] The second defendant stated that on 6th June 2016, the claimant responded that he opposed offsetting the blocks. On 16th June 2016, the defendants' attorney wrote to the claimant advising that he had committed to giving an additional \$44,565.00 worth of blocks to customers, an increase over the amounts given in April of 2016, thus the balance of the purchase price had been reduced to \$133,168.00 and requested that the claimant confirm the balance and for the parties to enter into an agreement for an extension of time and a supplemental agreement for the payment of the \$133,168.00⁷.

[39] The second defendant stated that the claimant responded by authorising the defendant to supply the blocks and cement to customers who had deposited receipts showing that they held an account with Midland and would be used to be offset against the purchase price⁸. Thereafter, he wrote to the claimant on 3rd November 2016 asking for a clear indication that as they advance, the purchase price balance will be cleared to offset the balance⁹.

[40] The second defendant stated having not received a response from the claimant to the correspondence of the 3rd of November 2016 and he continued to settle receipts for blocks on the authorisation of the claimant after that date. Indeed he admitted that there had been no pre-action protocols concerning this matter and that he has never received a letter setting out the balance outstanding and whether he would be allowed to pay the same to complete the purchase agreement.

ISSUES

[41] That is the evidence of the parties. Based on the evidence, it is clear to this court that the issues which fall to be determined are two broad issues, namely:

- (1) Whether the defendants have any obligations to the claimant under the lease to purchase agreement in light of clause 15 of the purchase agreement.
- (2) Whether the defendants owe the claimant monies under the purchase agreement in the circumstances of this case for use and occupation.

Court's Consideration and Analysis

ISSUE NO.1 whether the defendants have any obligations to the claimant under the lease to purchase agreement in light of clause 15 of the purchase agreement.

⁷Exhibited as MC2 at paragraph 21 of the Affidavit in Opposition filed on 14th February 2020.

⁸ Exhibited as MC3 of the Affidavit in Opposition filed on 14th February 2020, indicating a bundle of authorization letters from the claimant.

⁹ See paragraph 24 of the Affidavit in Opposition filed on 14th February 2020, letter exhibited as MC2 at para [21].

The Lease to purchase Agreement

- [42] This issue encapsulates the nub of the claim of the claimant for arrears of rent and for mesne profits for the period between the conclusion of the lease to purchase agreement and the period when the second defendant gave up actual occupation.
- [43] The determination of this issue rests on the interpretation to be had of clause 15 in the purchase agreement which came into effect in 2015.
- [44] Clause 15 is set out in its entirety as Paragraph 14 herein but bears repeating here.
“Clause 15:
This agreement supersedes and nullifies all prior agreements, understandings, negotiations and discussions, both oral and written between the parties hereto with respect to the sale of the property.”
- [45] It is therefore clear that the effect of this clause is limited to any other agreement that may have existed with regard to the *sale of the property*. Indeed, it is without a doubt that when a court is considering the interpretation of a business or commercial contract, it must be governed by considering the clear and ordinary meaning of the language of the provision, and consider the contract as a whole whilst taking into account commercial purpose and common sense avoiding extrinsic evidence unless there is some ambiguity in the text¹⁰.
- [46] The primary rule is that words should be given their ordinary, plain and literal meaning, as understood by a reasonable person. The meaning of a particular clause or phrase must be understood in the context of the entire agreement. Where a literal interpretation would lead to an absurd or commercially unrealistic result, courts may take into account the commercial purpose and context of the contract.
- [47] This principle of law was clearly stated in the case of **Kier Constructions Ltd v Sundry Workers**¹¹, by Price-Findlay JA at paragraphs 33 and 34 wherein the Learned Justice of Appeal cited with approval the decision in **Rainy Sky SA and Others v Kookmin Bank**¹². The Learned Justice of Appeal adopting the learning of the UK Supreme Court in **Rainy** posited that where the parties have used unambiguous language, the Court must apply it. In paragraph 32 she adopted the following:

¹⁰ Arnold v Britton [2015] UKSC 36

¹¹ ANUHCVP2022/0009 Formerly [ANUHLTAP2019/0007]

¹² [2011] UKSC 50.

“14....the ultimate aim of interpreting a provision in a contract, especially a commercial contract, is to determine what the parties meant by the language used, which involves ascertaining what a reasonable person would have understood the parties to have meant... the relevant reasonable person is one who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.”

- [48] Indeed this position is well settled as was most recently stated in the case of **Wood v Capital Insurance Services Limited**¹³ where the court at paragraph 10 put it thusly, “The court’s task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause but that the court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning...”
- [49] Thus, in addressing its mind to the interpretation of clause 15, in the case at bar, the court is therefore mandated to first and foremost consider the plain and ordinary meaning of the words used. The clause clearly states that “this agreement supersedes and nullifies all prior agreements, understandings, negotiations, and discussions, both oral and written between the parties hereto with respect to the sale of the property.”
- [50] So not only does this clause have a limited effective implementation, as noted previously, the operative words being “supersedes” and “nullifies” convey an unequivocal intention by the parties that the current agreement, upon execution, displaced and rendered void any and all previous arrangements, whether formal or informal, concerning, only, the sale of the property. The use of the phrase “all prior agreements, understandings, negotiations, and discussions” underscores the comprehensive scope of the clause, capturing not only formal contracts but also any preliminary discussions or negotiations, whether oral or written, that may have occurred between the parties. This language therefore indicates a clear intent to preclude either party from relying on any representations or commitments made before the execution of the current agreement.
- [51] There having been no ambiguity used in the words which the parties chose, this court must apply them.¹⁴ There is no absurdity created by relying on the natural language of the clause and the same makes it clear how any other agreements are to be construed upon the execution of the purchase agreement. So although Clause 15 nullifies prior agreements concerning the *sale of the property*, it did not address the issue of the arrears of rent that would have accrued under the lease to purchase agreement or the mesne profits. These claims, arising from the tenant’s occupation of the property prior to the execution

¹³ [2017] UKSC 24

¹⁴ **Kenneth Kryz and ors v New World Value Fund and ors** BVIHCMAP2013/0017

of the purchase agreement, are therefore independent of the purchase agreement and must be dealt with in that manner.

[52] The claimant's right to claim on behalf of the estate any and all sums due under the lease to purchase agreement for the agreed rent in this court's mind must remain unaffected by Clause 15. Accordingly, any obligations or disputes arising from the lease to purchase agreement, solely in terms of such as claims to mesne profits or unfulfilled terms, must be assessed independently.

[53] Indeed the parameters of clause 15 clearly place it within the meaning and effect of an option-to-purchase clause that would normally be considered in a lease agreement. In the case of **River Doree Holdings Limited v AG of St. Lucia**¹⁵ Carrington JA [AG] in paragraph 41 stated the nuance of this type of clause as follows:

“An option to purchase within a lease is generally treated as a distinct contract between the lessor and the lessee and therefore collateral to the relationship of the lessor and lessee that is created by the lease. In **Griffith v Pelton**,¹⁶ Jenkins LJ (as he then was) after describing the attributes of a stand-alone option to purchase (an option in gross) continued:

“An option contained in a lease for the lessee to purchase the freehold differs from an option in gross only in the respects that the grantor and grantee stand in the relationship of landlord and tenant, and that the contract creating it is made part of the terms on which the lease is granted. But, albeit collateral to the lease, it is in itself a distinct contract possessing all the essential characteristics of an option in gross”.

[54] In the case at bar, it was clearly the case that there are two distinct agreements: the lease-to-purchase agreement, which combines both an option to purchase the property and a lease agreement. As such there were two distinct obligations of the second defendant under the lease to purchase agreement and as such should be treated separately. When the parties entered into the purchase agreement, Clause 15 only addressed and nullified the arrangements relating to the purchase aspect of the original lease-to-purchase agreement. However, it did not pertain to the lease portion of that original agreement, as the lease remains separate and distinct, and is unaffected by the parameters of Clause 15. Therefore this court must now consider whether the claimant is entitled to the claim for arrears of rent and Mesne Profits.

Mesne Profit and Arrears of Rent

¹⁵ SLUHCVP2012/0028

¹⁶ [1958]1 Ch 205, 225

- [55] Mesne profits refer to compensation or damages granted to a property owner for the unauthorized use of their land by someone else. This occurs when a person occupies the property without legal permission, such as after a lease has ended or during adverse possession. Once a lease expires, the tenant no longer has the legal right to stay on the property unless a new agreement is established.
- [56] If the landlord does not explicitly agree to the continued occupation but is aware of it, they may still claim mesne profits for the period after the lease expires. This is essentially the equivalent of rent, compensating the landlord for the continued use of the property without a legal right. The amount claimed would usually be based on the rental value during the continued occupation after the expiration of the lease.¹⁷
- [57] In ***Geddes Meyer v Kehvin Dickinson***¹⁸ at para [55] Blenman JA (as she then was), in relying on the learned authors of Hill and Redman by their text Law of Landlord and Tenant stated:

“It is the law that where a person has been in occupation of land without an agreement, the landlord may bring an action against the occupier for use and occupation to recover a sum in reasonable satisfaction for the lands held or occupied. In such circumstances, the owner of the land will have an action for wrongful use and occupation or mesne profits against the trespasser. **The principle is as follows:**

“The principle is that a trespasser shall not be allowed to make use of another person's land without compensating that other person for that use. Usually, where the landlord is kept out of his property by a tenant wrongfully failing to deliver up possession he will be entitled to damages for trespass (or mesne profits as they are commonly called in the context of the law of landlord and tenant) for a sum equal to the rental value of the premises during the period when the landlord is kept out of possession.”

- [58] In applying the principles from ***Geddes Meyer v Kehvin Dickinson*** to the present facts, the second defendant, by his own admission remained in occupation of the premises after the expiration of the lease on October 5, 2012, until November 30, 2013, and he admitted that no further rent was paid. At that juncture, there was no legal right for the second defendant to remain in occupation of the premises and I do not accept that the claimant would have allowed him to remain for almost a year to the detriment of the estate to which he owed a fiduciary duty. This court therefore finds that there is a sum due and owing by the second defendant as mesne profits for the period 5th October 2012 to 30th November 2013 at USD\$8,000 per month.

¹⁷ Halsbury Laws of England -Landlord and Tenant (Volume 62 (2022) para 302

¹⁸ ANUHCVP2014/0005

- [59] In relation to the claim for arrears of rent, again this court holds little store in the version that was proffered by the second defendant that there was never a discussion in relation to the arrears of rent as owed to the claimant. The court accepts that there may have been some discussion between the parties at periods when the defendants were unable to make payments on time due to the inconsistent working of the machinery, but this court does not accept on a balance of probabilities that there was any agreement for the complete non -payment of rent.
- [60] Indeed by the second defendant's own documents, he had initially acknowledged the arrears of rent through his correspondence dated November 20, 2013¹⁹. In that letter, in which he clearly recognized his outstanding obligations, he expressed reasons for his inability to meet the rent obligations, sought to negotiate a solution, and requested an extension for vacating the premises.
- [61] Moreover, the defendant's attempt to refute the arrears in rent by calling upon the claimant to provide strict proof, despite his own failure to produce receipts of payment, further weakened his credibility. The court is left with the firm impression that the second defendant has a difficult relationship with the truth.
- [62] This court is, however, prepared to accept the evidence of the claimant in his contention that the defendant failed to pay rent for the period of August and September 2012 being the last 2 months of the lease agreement. The court notes that the defendant did pay EC\$100,000.00 on the date of the Notice to Quit or USD equivalent of \$37,037.04²⁰. Therefore the defendant owes US \$112,000.00 in mesne profit (being 14 months at USD\$8,000.00 per month) and US \$16,000.00 in arrears of rent, totalling US \$128,000.00, with a deduction of \$37,037.04. Therefore, the remaining sum outstanding under the lease-to-purchase agreement is US \$90,962.96 or ECD\$ 245,599.992.

ISSUE NO. 2 Whether the defendants owe the claimant monies under the purchase agreement in the circumstances of this case?

- [63] It is the evidence before this court that the parties entered into a subsequent agreement, the purchase agreement concerning the purchasing of the property, on 16th March 2015. Pursuant to that agreement, the parties agreed that the defendants would purchase the property for the sum of EC \$1,000,000.00. Further, the defendant contracted to complete the purchase of the property within six (6) months after entering the agreement.
- [64] Clause 2 of the agreement provided for the payment of EC \$100,000.00 as security deposit, a further EC \$240,000.00 to be paid upon the execution of the agreement, a further \$300,000.00 within three (3) months thereafter and the balance of the Purchase Price of EC \$400,000.00 to be paid prior to the

¹⁹ Exhibit as AG 10 at paragraph 31 of the claimant's Affidavit in Reply to the Defendant filed on 20th July 2020.

²⁰ Being the 31st May 2013, at an exchange rate of EXD 2.70 to 1 USD.

completion date. It is the uncontroverted evidence before this court that the defendants paid the amount of EC \$800,000.00 to the claimant.

[65] However, it is the argument of the claimant before this court that the second defendant failed to complete the purchase of the property within the stipulated time as agreed, thus repudiating the contract. Consequently, after 4 years had passed without the defendant completing payment of the purchase price, the claimant was of the opinion that he was free to sell the property to a third party, and in fact did so.

[66] It is also not disputed that when the completion date came for the purchase agreement, the second defendant was unable to complete and remained in occupation of the property for a period in excess of 4 years until he abandoned the same in 2019 when the second defendant admits all utilities were disconnected from the property. The second defendant however, claims there was no abandonment and that he retained an interest in the same although he agreed in cross-examination that he had not carried out any work on the land since 2019. The mere fact that he retained on the property, in his own words, rocks for making blocks (for a block machine that had not worked for some time prior and certainly not in 2019), building materials in particular spouting, a forklift (no evidence led of it still being useable) and a “wrecked” car, in this court’s mind could not, in this court’s mind, amount to an occupation of the said premises.

[67] Thus, this court accepts that by 2019, the defendant was no longer in possession of the land, the subject matter of the purchase agreement. Indeed, it is accepted that where a person occupies premises without an agreement to pay for such occupation but was allowed to occupy pursuant to an intention to either lease or purchase, compensation is recoverable as damages for breach of the implied agreement to pay for the use of the land.²¹

[68] In the case at bar, the claimant allowed the second defendant into occupation under the purchase agreement with the understanding that the entirety of the purchase price would be paid within six months, not fifty-one months.

[69] The claimant argues that if the court finds that the second defendant remained in occupation, the estate is entitled to an additional fifty-one months’ of occupation rent, amounting to \$408,000 USD or ECD\$1,096,785.60 After crediting the ECD \$800,000 already paid, the balance would stand at ECD \$296,296.

[70] However, this is the nub of the second defendant’s challenge in that he strongly disagrees that he is due to pay any sums for use and occupation as he had paid ECD\$800,000.00 towards the purchase price of the EC \$1,000,000.00. Additionally, that there had been a firm agreement between himself and the

²¹ Halsbury Laws of England- Landlord and Tenant (Vol 62(2022) paragraph 301

claimant, that he, would be responsible for honouring previous unfulfilled arrangements made by Midland Business with customers. In doing so, the second defendant maintained that the aggregate of those sums would then be applied on account to offset the remaining \$200,000.00 of the purchase price. It is therefore the second defendant's case that he fulfilled this agreement by providing blocks and cement in the total sum of EC \$174,820.20²². The second defendant therefore says he did not repudiate the contract and as such owes no money as claimed.

OFFSET OF THE PURCHASE PRICE

- [71] Before the court embarks on a discussion of the terms of the contract and the obligations which may have arisen therefrom in the circumstances, the court will take as a preliminary point, the offsetting of the balance of the purchase price.
- [72] It is the evidence before this court that subsequent to the purchase agreement, the parties entered into an oral agreement for the second defendant to provide blocks and cement to customers of Midland Business Supplies who had paid Mr Jeffers deceased, and had not received their supplies prior to his demise. It is also clear to this court that the parties had employed and agreed upon a method in which the customers' supplies would be honoured by the second defendant. That is, the claimant would provide an authorisation letter to the defendant, of which the second defendant would honour the receipts and provide evidence by stamping the receipt Constructions Products Limited ("CPL") with the date of delivery affixed thereto. It was pursuant to these conditions, that it was intended that the balance of the purchase price would be satisfied.
- [73] The second defendant, in a letter to the claimant dated 18th April 2016²³, indicated that he had received invoices that exceeded the remaining obligation of EC \$200,000.00 owed to the claimant. He further communicated that he was still committed to supplying additional materials valued at EC \$44,456.00. In fact this contention contained in the correspondence was repeated in his affidavit dated 2nd March 2020²⁴, in relation to the provisions of cement and blocks to customers of Midland Building Supplies who had prepaid for such goods. According to the defendant, he repeated that the total value of the blocks and cement provided amounted to EC \$174,820.20, however, it is notable that, based on the defendant's own evidence, the supporting documentation reflected that only EC \$98,906.00 in products was in fact honoured²⁵.

²² Attached copies of authorization letters and receipts and spreadsheets marked as MC1 in the further affidavit in opposition filed on 2nd March 2020.

²³ Attach copies of the letter addressed to Mr Greer and the spreadsheet exhibited as MC2. See paragraph 21 in the defendant's affidavit in opposition filed on 14th February 2020,

²⁴ See pg 122 of index to trial bundle, the defendants' further affidavit in opposition.

²⁵ See pg 125 of index to trial bundle. In the defendants' further affidavit in opposition, Mr Codrington exhibited a table of calculation which states "issued" and by his own calculation presented to the court, he paid the sum of EC \$98,906.00.

- [74] Therefore, at the outset, this court finds the defendant's calculations concerning the fulfilment of receipts to be unconvincing. Furthermore, the evidence presented by the second defendant does not substantiate his claims, as much of it does not conform to the method of accounting agreed upon by the parties. The claimant has effectively challenged the legitimacy of the receipts submitted by the defendant, and the court, having thoroughly reviewed the receipts in question, finds them lacking in credibility. On a balance of probabilities, the court is more inclined to accept the claimant's position that the receipts are unsubstantiated.
- [75] Consequently, the court undertook its own arithmetic assessment based on the evidence presented.
- [76] From the assessment, the court makes the following findings:

Letter from Claimant Authorising receipts	Blocks Owed	Cement Owed	Midland Business receipts value	Products CPL issued	Cost
Jacinth Christopher	550			delivered on Jan 7 2018	\$2,805.00
Anna-Maria Charles	2000		\$6109.00	Not delivered	
Merlin Francis	607		\$2,696.33 ²⁶	Not delivered	
Adam Francis	2751		\$17,283.2 ²⁷	Not delivered	
Petrona Frederick	100	7	\$1815.26 ²⁸	18 blocks delivered April 22 2017	\$59.76
Curtis Hopkins	1187	85	\$6,866.08	Not delivered	
Randy Isaac	1218		\$7125.13	Not delivered	
Branty Isaac	150		\$613.75	Not delivered	
Loretta	1000		\$3235.09	Not delivered	
Shery-Dene King	2491		\$8,997.75	Feb 8 2018	\$1,498.88
Andrea Joseph	172		\$1006.00	Not delivered	
Marilyn Mason	570		\$2,268.60	Not delivered	
Bruce	600		Unknown	Not delivered	
Paul Nathaniel	2639.00		Unknown	Not delivered	
Claudette Richards	577		\$2138.20	28 th February 2018 took 289	\$882.68
Kerrusian Robinson	470		\$2046.52	Not delivered	
Carmratta Smithen	1684		No discernible	90 blocks ²⁹ 28/2/18	\$334.00
Shelly Christian	1250		\$6,772.00	200 on 20/8/2016	\$740.95
No letter					
Frederick Williams			\$5,588.20	Not delivered	

²⁶ There were two receipts in the value of 1997.64 and 698.69 respectively.

²⁷ Combined total from three receipts.

²⁸ Arrangements were made where if cement was not available blocks would be delivered in lieu of cement.

²⁹ 50 8inch blocks and 40 6 inch blocks

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[77] Based on the court's calculations, it concurs with the claimant's argument that the majority of the receipts are unsupported. The court is not persuaded by the figures provided by the second defendant. It is a well-established principle that the burden of proof lies on the party asserting the claim. In this instance, the second defendant has failed to demonstrate to the court that the receipts were honoured to the extent he claims. Accordingly, the court concludes that only EC \$6,321.30 has been adequately proven.

[78] Therefore, the court finds that as of the date of the filing of the affidavits in this matter, the amount paid towards the purchase price by the second defendant was \$806,321.30., and accordingly, the second defendant had failed to complete the purchase price within the time frame stipulated under the purchase agreement.

THE PURCHASE AGREEMENT

[79] The claimant argued that the defendant repudiated the contract and on that basis he was free to sell the property to a third party. Further to this argument, the claimant also however admitted that the agreement had not included a time-of-the-essence clause but that its absence did not alter the defendant's abject failure and his ability to proceed with the sale.

[80] It is recognised in the case law ³⁰that when time is not made of the essence in a purchase agreement, the failure of a purchaser to complete on the scheduled date, does not give rise to an automatic repudiatory breach, provided that the purchaser completes or is ready to complete within a reasonable time thereafter. In the case at bar the claimant asserted that the defendants failed to complete the purchase within a reasonable time frame, as the sale should have been finalized by September 2015. No payments were made between that date and the commencement of legal proceedings on 27th August 2019, and to date, no further evidence of payments has been provided. This court agrees with the claimant, that there having been no completion by the second defendant within a reasonable period, the purchase agreement was at an end as of the September 2015.

[81] As such the claim of the claimant for the payment of damages for use and occupation (not mesne profits) must be considered.

[82] In this case, there is no doubt that the second defendant was in occupation under a **purchase agreement**, not a lease, and had made a significant partial payment toward the purchase price of the property, of close to 80% of the same.

³⁰ Rightside Properties v Gray [1975] Ch 7

- [83] There is no evidence before the court as to the time period over which the second defendant, in fact, made this payment, but one can extrapolate that the same was certainly paid at the commencement of the contractual period up to the time the claim was filed. In fact, there is nothing before the court to suggest that the payment admitted to by the claimant was made between March 2015 and September 2015. In this court's mind, there was, therefore, tacit acquiescence by the claimant to the second defendant's occupation while monies were being paid. It is when the balance of the monies came into dispute, and the parties could not agree as to how much had in fact been offset, that the claimant then took the position that there had been repudiation and that the estate was entitled to compensation for use and occupation. This is a position that does not find favour with this court.
- [84] Indeed, there was no evidence presented to the court that during the period from 2015 to 2019 if monies were being paid, that the second defendant had occupied the premises against the wishes of the claimant or the estate. In those circumstances, the court finds it difficult to reward the claimant for his own failings in taking active steps to bring the purchase agreement to a formal end or to take steps to evict the second defendant.
- [85] In this court's mind, it was the action of the claimant in selling the property to a third party that formally brought the purchase agreement to an end. However, this court finds no fault with the claimant for having done so after a further period of 5 years from 2019 (when the claim was filed) of non-performance by the second defendant. Indeed, the purchase agreement at Clause 6 made such provision for that eventuality as follows [that]:
- “Should the purchaser fail to complete this transaction without cause on the completion date, the purchaser shall forfeit, and the vendor shall be entitled to retain the Security Deposit and this Agreement shall be at an end, or alternatively, the Vendor may pursue any and all remedies available to the Vendor in law and equity.”
- [86] It is therefore clear that having effected the sale of the property in 2024 the second defendant should have been entitled to some notice of the same however in the circumstances, the court does not find that the failure to give notice invalidates the sale. Based on the evidence, the court is not satisfied, and neither can it be said in the circumstances that the second defendant was ready and willing to complete the sale of the property.
- [87] In circumstances where there is a notice of completion, both parties must be ready and willing to complete the agreement. In the authority *of Midill (97PL) Ltd. v Park Lane Estates Ltd et al*³¹, the court in paragraph 9 of the judgment states the following:

³¹ [2008] EWCA Civ 1227

“It is common ground that the vendor must be ready and willing to deliver the instrument of a transfer of property ... to the **purchaser** in exchange for the price and the **purchaser** must be ready and willing to pay the price in exchange for the instrument of the transfer. The obligations are concurrent. As the obligations of vendor and **purchaser** are concurrent either both parties are in fundamental breach at the appropriate date or neither is.”

[88] In the circumstances, the second defendant defaulted by failing to pay the purchase price within the stipulated time frame. In this case, the second defendant has lost his claim to the property. He has also lost his security deposit as paid under the purchase agreement. It was however not clear to the court whether the monies paid to the claimant under the purchase agreement as found to be ECD\$806, 321.30 also included the payment of the security deposit. However this court accepts that the security deposit having been part of the purchase price and the common ground of the parties that at least ECD\$800,000.00 had been paid, this court accepts that having defaulted the sum having been paid to towards the purchase price must now stand at ECD\$806,321.30.

[89] Therefore, taking into account that the sum due to the claimant and the estate for arrears and mesne profits under the lease to purchase agreement is ECD\$ 245,599.992, and the security deposit from the purchase agreement of EC\$100,000.00., this court would find it unconscionable to allow the claimant to retain the sum of \$460,721.38³² of the second defendant's money paid towards the incomplete purchase of the property. The claimant took no active steps until some four (4) years after the transaction was to be completed and in doing so retained any and all monies paid by the second defendant without demurrer. The claimant must therefore re-pay the sums due to the second defendant less any sums that were due to the statutory authorities for utilities used during the period 2015 to 2019 when the second defendant was in occupation.

[90] The order of the court is therefore as follows:

1. The second defendant is to pay the sum of ECD\$258,067.20 as arrears of rent and mesne profits
2. The prayer for payment of use and occupation of property is dismissed
3. Pursuant to section 20 of the Eastern Caribbean Supreme Court Act³³ the court orders that the sum of ECD\$258,067.20 is to be offset as against the ECD\$806,321.30 paid by the second

³² Being EC \$806,321.30 – (EC \$245,599.992 as mense profit + EC \$100,000 as security deposit).

³³ Cap 143 which states that “ The High Court ... in the exercise of the jurisdiction vested in them by this Act shall in every cause or matter pending before the Court grant either absolutely or on such terms and conditions as the court thinks just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim or matter so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of these matters avoided.”

defendant to the claimant under the purchase agreement and the second defendant is to be paid the balance therefrom after deductions for any sums due to statutory authorities for utilities during the period 2015 to 2019 as certified by the statutory authority responsible for the same.

4. In the discretion of the court and in all the circumstances in which the claimant was only partially successful, the court orders each party is to bear their own costs, save and except the costs due to the claimant on the withdrawal of the application of the second defendant at trial which this court assess in the sum of \$1000.00.

Nicola Byer

High Court Judge



By the Court

Registrar