

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2016/0002

BETWEEN

MARGARET WILLIAMS

(Formerly of Upper Cane Hall, St. Vincent,
now residing at 13 Ignatius Lane,
Scarborough, Ontario, M1E 0A2, Canada)

CLAIMANT

AND

CYNTHIA QUANSAH NÉE WILLIAMS

(Formerly of Upper Cane Hall, St. Vincent,
now residing at 24 Trailhead Crescent,
Brampton, Ontario, L6R 3H3, Canada)

DEFENDANT

Appearances:

Ms. Samantha Robertson and Ms. Charmaine Walters for the claimant.
Dr. Linton Lewis and Ms. Malika Lewis for the defendant.

2019: Dec. 19

2020: Jan. 22

JUDGMENT

BACKGROUND

- [1] **Henry, J.:** This case pitted two sisters against each other in a long standing dispute over their respective rights, title to and interests in a tiny parcel of land on which they each constructed a home. Margaret Williams and Cynthia Quansah are those sisters. They are nationals of Saint Vincent and the Grenadines who migrated to Canada years ago and now reside there. Margaret Williams is registered as the owner of property situated at Upper Cane Hall in the State of Saint Vincent and the Grenadines. It comprises a parcel of land of approximately 2,753 sq. ft. registered

by Deed No. 585 of 1994. It was previously owned by the Housing and Land Development Corporation and was conveyed to Ms. Williams in 1994. The sisters lived on that property with their parents and 6 brothers and were all raised there in a wooden building owned by their father.

[2] Around 1981, Mrs. Quansah built a two-storey concrete building adjoining the existing wooden structure. Ms. Williams subsequently demolished the wooden residence in which the family lived and constructed her residence adjoining her sister's home. They shared a common bathroom. They each left Saint Vincent for Canada, Mrs. Quansah having preceded Ms. Williams by some 8 to 10 years. Ms. Williams stayed with her sister when she initially arrived in Canada. A disagreement brewed between them when Mrs. Quansah discovered that Ms. Williams had acquired title to the subject land.

[3] Ms. Williams alleged that Mrs. Quansah eventually demanded payment for her interest in her house, whereupon they made an oral agreement for the property to be valued and for Ms. Williams to pay her for the value of her building. Ms. Williams claimed that the property was valued as agreed and that she made arrangements to compensate Mrs. Quansah. She testified that her sister has refused to accept the payment. She seeks an order compelling Mrs. Quansah to perform the alleged contract and accept the compensation as agreed. She also claims a declaration that she is entitled to possession of the property in exchange for such compensation. Alternatively and in addition to that, she seeks damages for breach of contract and costs.

[4] Mrs. Quansah contended that the land and original wooden building have always been regarded as family property. She denied having any agreement with Ms. Williams to have her residence valued or to accept compensation for it from her. She also denied making the alleged contract or any part of it. She maintained that she is entitled to all legal and equitable interests in the building constructed by her. I have found that Mrs. Quansah is liable for breach of contract.

ISSUE

[5] The issues are:

1. Whether Mrs. Cynthia Quansah is liable for breach of contract?
2. To what remedies, if any, is Ms. Williams entitled?

ANALYSIS

Issue 1 – Is Mrs. Cynthia Quansah liable for breach of contract??

- [6] Ms. Williams testified and she had one witness - Mr. Franklyn Evans, a property valuator. She recounted that her parents had eight children (including her older sister Cynthia) whom they raised on the subject land. She testified that her father Beresford Horne explained to her that his former employer Clive William built a wooden house on the land for him and recovered the cost of construction by deducting it from his wages.
- [7] Ms. Williams recalled that around 1981 her sister Cynthia constructed a concrete 2 storey house on the land. For her part, from about 1990, she said that she incrementally demolished the wooden house belonging to her parents and built a 3 bedroom house in its place. Her residence adjoined her sister Cynthia's and shared a common bathroom with it. Mrs. Quansah acknowledged this.
- [8] Ms. Williams explained that over the years spats arose within the family between her male siblings and her. Consequently, her father accompanied her to consult a lawyer - one John Cato. Mr. Cato went with them to the land tax department where they discovered that her father's name was not on the tax roll. Ms. Williams stated that they then visited the Housing and Land Development Corporation ('HLDC') where her father requested that her name be placed on the deed. She stated that she paid \$825.90 for the land, which was thereafter registered in her name by Deed No. 595 of 1994.
- [9] The deed rehearsed that the HLDC was the fee simple owner of the subject property and had sold it to Margaret Williams for \$825.90. The description of the property in the Schedule outlines the boundaries and circumscribes the area of land to be 2,753 sq. ft.. It makes no mention of Beresford Horne or anyone else having an interest in the land. Beresford Horne died in 2007. Ms. Williams testified that her father made it clear that all that he owned belonged to her.
- [10] On arriving in Canada, Ms. Williams stayed with Mrs. Quansah initially. She secured employment as a live-in babysitter. She said that she left her deed in her suitcase where her sister found it while she (Ms. Williams) was at work. She explained that this generated animosity between them because her sister was upset when she learnt that the land was registered in her sole name.

- [11] Ms. Williams stated that in 1998 they visited Saint Vincent, at which time Ms. Quansah sought legal advice from Mr. Theodore Browne and got her house valued for \$40,000.00, with a view to selling her interest in it to her (Ms. Williams). Ms. Williams testified that at that time she was unable to pay that sum of money, and so the proposed sale did not proceed. Mrs. Quansah indicated that she could not recall going to see Mr. Browne or getting a valuation of \$40,000.00 as alleged. She insisted that she did not go to see him in respect of the land.
- [12] Ms. Williams attested that in 2013 she and Mrs. Quansah were once again in Saint Vincent and things came to a head. She recalled that her sister confronted her and demanded that she pay her for her building. Ms. Williams claimed that the police was called but did not resolve the dispute. She said that she went to lawyer Olin Dennie who arranged a meeting between her and Mrs. Quansah in December 2013.
- [13] She said that during that meeting she and Mrs. Quansah agreed to have the two-storey structure valued and that she (Ms. Williams) would pay Mrs. Quansah for the building, based on the value for which the property was assessed. She testified that they also agreed to split the cost of the valuation. She remembered that Mr. Dennie telephoned Mr. Evans, the valuator at that time and visited the premises with him a few days later, where Mr. Evans carried out his assessment preparatory to completion of the valuation.
- [14] She said that he later produced a valuation report ascribing a value of \$65,470.00 to the house. The sisters each paid half of the \$500.00 fee for preparation of the valuation. Mrs. Quansah said that she paid Mr. Evans \$250.00 but was adamant that she did so only on her brother Ardon Horne's recommendation that she make a contribution towards the expense.
- [15] Ms. Williams averred that she and Mrs. Quansah returned to Mr. Dennie's office on December 18th 2013, at which time they were presented with the valuation report. She said she offered to pay her sister the full \$65,470.00 value of the property and indicated her willingness and ability to do so right away. She alleged that her sister has refused to accept the payment and complete the contract.

- [16] Under cross-examination Ms. Williams stated that the agreement she had with Mrs. Quansah was that she would pay her for what she (Cynthia) put onto the property. Margaret Williams rejected the suggestion that she came to court to get Mrs. Quansah to sell her the property. She was insisted that the property is hers. She averred that they went to Mr. Dennie and had a settlement out of court; and now her sister is refusing to take the money. Curiously, she averred that the land was given to her by her father. Similarly, Mrs. Quansah maintained that her father owned the land. This obviously emanates from their understanding of such matters.
- [17] Mr. Evans testified that he conducted the valuation at Mrs. Quansah's residence on Saturday December 14th 2013, in the presence of Mr. Dennie, Ms. Williams and Mrs. Quansah. He recalled that he was let into the house by Mrs. Quansah. Under cross-examination he stated that he does not know Cynthia Quansah or Margaret Williams but that he met them there at the property. He could not recall if he spoke to anyone while there, about doing the valuation, but remembered that Mr. Dennie entered the premises, spoke with someone, then returned to him and told him to come. He indicated that he took photographs and viewed the building. He said that Mr. Dennie subsequently paid him his fee of \$500.00.
- [18] Mrs. Quansah testified that Mr. Evans came to her home that day. She said that he introduced himself and told her that he had come to value the property at Ms. Williams' request, and that she eventually allowed him to enter to conduct the valuation. She stated that when he was finished, he asked to be paid, and on her brother's advice, she paid him one half of his fee.
- [19] Mrs. Quansah submitted that the fact that Mr. Dennie was the one who sought permission to enter the premises demonstrates that she was surprised by his and Mr. Dennie's presence. She contended further that this confirms her assertion that she never agreed to sell her house, and was not aware of any agreement to sell her house to her sister. This argument ignores her own testimony that Mr. Evans spoke to her before entering her house that day and got her permission to conduct the valuation. I make no finding that she was surprised at Mr. Evans or Mr. Dennie's presence at her home. I am of the considered view that she expected them and allowed Mr. Evans to carry on with the valuation without protest.
- [20] She submitted further that although Mr. Evans testified that he did not recall speaking to her or her

sister and was adamant that he did not know them, their names appear on his valuation report as the clients. She reasoned that the inference can be drawn that he was instructed to conduct the valuation by someone other than her. While he was giving his evidence, and when asked if he knew the parties, Mr. Evans responded that he did not. He explained that he met them 'but to identify them, (he could) not surely say that'. This explanation suggests that although he met them, he would not equate that with knowing them. This is the interpretation I place on his testimony as it is the more reasonable one. I reject Mrs. Quansah's argument that it can be inferred that she did not commission the report.

[21] Ardon Horne, brother to Margaret Williams and Cynthia Quansah provided testimony supportive of Mrs. Quansah's case. He stated that when Mr. Evans visited the property Mrs. Quansah was reluctant to allow him to inspect it. He recalled that she complained that she did not ask for him to conduct the valuation and did not want to pay him. He stated that he suggested that she contribute to the payment and she paid half of it.

[22] Mr. Evans was asked to comment on Ardon Horne's statement that he received \$250.00 from Mrs. Quansah at the house. He said that he could not recall that happening. This variation in Mr. Evans' written and oral testimony is not alarming and is not reason to discredit his account. In view of the length of time that has passed since the events he described, it is not remarkable that Mr. Evans might have forgotten the specifics about the payment. I draw no adverse inference from this seeming lapse in recollection. Moreover, his averment that he was paid by Mr. Dennie was refuted by Mrs. Quansah, the party which that version would have benefitted more. I accept that he received payment of \$250.00 from Mrs. Quansah when he visited the property on December 14, 2013.

[23] The court is not persuaded that Mrs. Quansah paid half of the fee only because her brother encouraged her to do so. Mrs. Quansah's demeanour and posture while she was giving evidence portrayed her as a strong-willed and resolute person who maintained that she had no agreement to sell her property and who insisted that she never intended to sell it and would never sell it. She did not strike me as someone who would be cajoled into participating in any endeavour to which she was not fully committed. I therefore reject the assertion that she paid the \$250.00 only at her

brother's behest. I find that she paid it in furtherance of the agreement between Margaret Williams and her to have the house valued for the purpose of sale to Margaret.

- [24] Mrs. Quansah testified that she built her house on property that she considered to belong to her father. She said that he never told her that he did not own the land or that he intended to give it to any of his children. She explained that her house was adjoining her father's wooden residence. She stated that when she started construction, her sister Margaret was no longer living at home, but resided elsewhere in the State. Her brother Ardon made similar averments on this score.
- [25] Mrs. Quansah insisted that she never had any discussions or agreement with Margaret Williams to value her two storey house or any other agreement at all. She denied making any agreement at Mr. Dennie's chambers concerning selling her property. She denied that Ms. Williams made any promise to pay her a lump sum for the property. She maintained that it is her home and that she lived there with her daughter Terressa Sutherland from the time it was constructed until she migrated to Canada in 1985. She contended that she has made arrangements for her brothers Kenroy and Brian Horne to live there and that they have nowhere else to live.
- [26] Mrs. Quansah asserted that she has never encountered problems with anyone trying to prevent her from entering her home or disturbing her peaceful enjoyment and she has never allowed anyone to enter it without her permission. She averred that around 1994 she discovered that her sister Margaret had obtained documents from the HLDC which appeared to be a deed. She said that she was surprised by this because she always thought that her father owned the land. Under cross-examination she stated that she has since found out that her Margaret sister owns the parcel of land on which the house is situated.
- [27] She testified that she was not aware that her father had 'permitted' the HLDC to make the deed in Margaret Williams' sole name. She further averred that Ms. Williams 'gave the impression that she was in charge of the area where the wooden structure was located' but 'never did anything or made any attempt to claim ownership of the two storey building or the area where it is located. This averment appeared in her witness statement which was filed over 2 years after her defence¹. She made no such assertions in her defence. They constitute new factual contentions which were not

¹ Filed respectively on 11th June 2018 and 29th February 2016.

foreshadowed in her pleadings. This violates the stipulations in rule 10.5 of the Civil Procedure Rules 2000 ('CPR'). They are therefore disregarded.

[28] Mrs. Quansah insisted that the area on which her house is situated is her property. She testified that she has been advised by her lawyer that she has been in exclusive possession of that area and the two storey building for 36 years. This is also a new factual assertion which introduces further legal contentions not set out in the pleadings. They are therefore ignored for present purposes. Mrs. Quansah argued that the court should dismiss Ms. Williams' claim.

[29] Ardon testified that she paid for all the construction including improvements and repairs that were carried out on her two storey home. He stated that he no longer lives at the Cane Hall property and indicated why. He explained that around 1987 or 1988 the police delivered a letter to him from his 'sister' demanding that he leave the house. He said that he left because he thought that the letter was from Mrs. Quansah. He averred that if he had known that it was from Ms. Williams he would not have left the property, because she had no authority to instruct the police to move him. He attested that at that time he was living in Mrs. Quansah's house.

[30] Like, Mrs. Quansah, Mr. Horne said that he believed that his father owned the wooden structure and neither his father nor anyone else ever told him that Ms. Williams had documents which evidenced her ownership of the land on which it was built. He asserted that to the best of his knowledge and belief Mrs. Quansah will not be selling the two storey building. He stated that she always wanted it to be used by her siblings and further she stays there when she visits the State. Ms. Williams testified that Mrs. Quansah stays at the residence of one Mrs. Sutherland whenever she comes to Saint Vincent.

[31] Another brother, Kenroy Williams also testified for Mrs. Quansah. He explained that he left the upper Cane Hall property in the late 1990s and moved in with his brother Ardon after Ms. Williams brought police to the property and instructed them to move him out. He asserted that Mrs. Quansah constructed the 2 storey building and therefore owns it.

[32] He too claimed that he thought the property belonged to his father, because no one told him

otherwise. He asserted that Mrs. Quansah is not selling the house as it is providing a home for him and his siblings including Brian who has a mental illness. However, he contradicted himself by adding that Brian currently lives in a dilapidated house adjoining the 2 storey building.

[33] The outcome in this case depends largely on credibility. It is one sister's word against the other's. Both ladies presented themselves as well-spoken individuals who did not appear to harbor any misunderstanding about the nature of the claim. Ms. Williams for the most part was poised and restrained. Mrs. Quansah was combative and at times evasive. Ms. Williams' account had the ring of truth to it and I prefer her testimony to Mrs. Quansah's. Mr. Horne and Mr. Williams added nothing to the issue regarding whether a contract existed between the sisters. Their belief that their father owned the subject land is not borne out by the record and is not probative of any factual contention.

[34] Neither party addressed the inconsistencies between Mrs. Quansah's defence as pleaded and her testimony. It is important to highlight them. In this regard, it is notable that Ms. Williams pleaded that she and Mrs. Quansah met at lawyer Dennie's office on December 10th 2013² and decided to settle the matter out of court. She further outlined 3 separate incidents of alleged part performance (in furtherance of the agreement) in paragraph 6 a) b) and c) of her statement of claim. She pleaded that on December 16th 2013 Mrs. Quansah permitted Mr. Evans to enter her property and that he appraised the interior and exterior for \$65,470.00; that Mrs. Quansah paid half of the cost to instruct the expert; and that at a further meeting at Mr. Dennie's chambers on 18th December 2013 she (Margaret) agreed to pay the assessed value by lump sum.

[35] In response at paragraphs 6 and 7 of her defence, Mrs. Quansah simply denied that there was any oral agreement between her and Ms. Williams which they partly performed. She did not traverse the assertion that she met with her sister at Mr. Dennie's office; and later complied with a term in the contract by permitting Mr. Evans to enter her house to appraise the value. She was required to do so expressly in accordance with rule 10.5 (10 (3) and (6) of the CPR.

[36] Those provisions stipulate that a defendant set out in her defence all facts on which she relies to

² Paragraph 5 of the Statement of Claim.

dispute the claim; indicate which allegations in the statement of claim are admitted or denied; and state the reasons for denying a particular allegation. If she fails to do so, she is not allowed to rely on any assertion which is not articulated in the defence, unless the court grants permission or the parties agree. No such permission or agreement arose in the case at bar. Therefore, Mrs. Quansah's may not rely on her subsequent denial that she met with Margaret Williams at Mr. Dennie's office.

[37] At paragraph 8 of her witness statement she stated:

'8. I never met with the claimant at the Law Chambers of Mr. Olin Dennie.'

In answers to questions in cross-examination she said:

'On 14th Dec 2013, I have no idea why they came. I never went to Mr. Dennie to value the place. He was my lawyer I had to go to him.'

Since Mrs. Quansah is not permitted to rely on her denial of these assertions, by default Ms. Williams has proved that she met with Mr. Dennie and her sister at Mr. Dennie's office on that day.

[38] Beyond that, Mrs. Quansah pleaded that there was 'no further meeting as pleaded by the Claimant on which occasion the Claimant agreed to pay the Defendant by lump sum payment or any sum at all.'³ She had not denied the earlier meeting, yet she is here denying 'the further meeting'. It is reasonable to infer that she was thereby implicitly acknowledging that the earlier meeting had taken place, but that no further meeting was convened. For those reasons, I find that she had a meeting with her sister at Mr. Dennie's office on December 10th 2013.

[39] Although Mrs. Quansah denied the existence of a contract pleaded by Ms. Williams, she did not refute the assertion that Ms. Williams partially performed the contract by paying half the cost of the valuation. Her pleaded defence is silent on this. This is remarkable because she expressly traversed another specific allegation in that part of the statement of claim. At sub-paragraph c) she denied that there was a further meeting. She has not denied this act of part performance by Ms. Williams either in her defence or testimony. She is therefore taken to have admitted it. She submitted that there was no part performance of the alleged contract. This contention is untenable

³ At paragraph 11 of her Defence.

in light of her failure to traverse that part of the claim. I find therefore that Ms. Williams paid 50% of the cost of the valuation in part performance of the referenced contract.

[40] Another relevant consideration concerns the authenticity of Deed No. 585 of 1994. Its validity has not been challenged directly but Mrs. Quansah launched oblique attacks against Ms. Williams' title by asserting that the land was owned by her father; and that she now owns the portion of land on which her house stands. Mrs. Quansah did not question the HLDC's title to the subject land prior to the transfer in 1994. No legal contention has been proffered which supports a finding that the HLDC's title was defective. I find therefore that prior to 1994 (when the subject land was registered in Ms. Williams' name) it was registered to the HLDC and owned solely by it.

[41] The fact that Mr. Beresford Horne owned the wooden house which was constructed on it, did not without more create for him any equitable or legal interest in the land. Mrs. Quansah made no legal submissions which support such finding. I am aware of no legal principle which leads to such conclusion. It is trite law that a wooden structure on land creates no legal or beneficial interest in the land without more. No evidence has been produced in the case at bar which leads to a conclusion that Mr. Beresford Horne owned any part of the subject land. I therefore reject the contention that he had any beneficial or legal interest, right or title to the it.

[42] What therefore is the effect of the registration of the subject land in Ms. Williams' name? The Registration of Documents Act⁴ ('the Act') provides that registration of title to real property pursuant to its provisions, constitutes due notice to all persons of its contents. It is also operates at law and equity to establish the right, title and interest of the registered interest outlined in it. Furthermore, each such registration assumes priority of time ahead of any subsequent registration in respect of that property. As such, the law establishes that by registration of Deed No. 585 of 1994 Margaret Williams became seised of and owns the title to the land described in the referenced deed.

[43] Mrs. Quansah pleaded that she registered an incumbrance on the subject property. She attached a copy to her defence. It was not produced into evidence. It is therefore not part of her case. For

⁴ Cap. 132 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009, section 5.

what it is worth, that incumbrance (No. 3969 of 2013) chronicled that the two storey building was constructed in 1982 with Margaret Williams' knowledge. It purports to create a lien on the property.

- [44] It is not clear what effect Mrs. Quansah intended the incumbrance to have on the rights, interests and title of the registered owner. Having been registered after 1994, the incumbrance is subject to the Deed No. 585 of 1994 in terms of priority and creates no title, interest or right to the subject land by itself. It is worth noting that the construction of a concrete building on the property in 1982 created no legal title or prescriptive title or interest to the property against the HDLC (the then owner). In fact, none was asserted by Mrs. Quansah in her defence against the HLDC or Ms. Williams. She first introduced a 'claim' to ownership in her witness statement. Moreover, a prescriptive title defence or claim must be pleaded⁵. In the absence of such pleading, there is no legal basis to entertain those implicit legal assertions. They are not entertained.

Breach of contract

- [45] Ms. Williams impressed me as a witness of truth. She was forthcoming and direct in her testimony which had the ring of truth to it. Mrs. Quansah on the other hand was guarded and overly and unnecessarily defensive. Where their accounts differ I accept Ms. Williams'. It was in all respects more probable that events unfolded as she recounted them. In this regard, her description of how her sister rifled through her belongings while she was away and located the deed; her description of the meeting at Mr. Dennie's office and Mr. Evans' visit to the property were credible. I believe her.
- [46] It is noteworthy that Mrs. Quansah insisted that she had not visited Mr. Dennie's office, yet she allowed Mr. Evans and him to come into her home to conduct a valuation, without even seeking information about why they were appraising her property. Furthermore, her 'contribution' to the fee for the valuation, at her brother's behest without ascertaining why the property was being valued is puzzling. I reject that this is what happened. I accept as more probable that she and Ms. Williams made the agreement to value the property and pay the fee in equal proportions as alleged by Ms. Williams. They authorized Mr. Dennie to contact Mr. Evans which he did on their behalf and

⁵ Halsbury's Laws of England Volume 87 (2017), para. 804.

accompanied him to their homes. I find that this is what transpired. Two of the material terms of the oral contract were thereby fulfilled.

[47] I accept too that they returned to Mr. Dennie's office as Ms. Williams testified, to finalize the remaining aspects of the agreement relating to payment of the assessed value and settle terms regarding the parallel obligation of conferring possession to Ms. Williams. I find on a balance of probabilities that it was then that Mrs. Quansah notified Ms. Williams that she was no longer going to part with her interest in the house. I am satisfied on a balance of probabilities that the sisters concluded an oral contract in Mr. Dennie's office as alleged by Ms. Williams, the essential terms being those outlined in her statement of claim and at paragraph 13 above.

[48] Ms. Williams submitted correctly that a contract is created in law if there is an offer made by one party which is accepted by the other party, and supported by consideration flowing from each party to the other. The parties must intend to create a binding agreement and the terms must be certain. I am satisfied that the sisters embarked on a joint quest for resolution over possession and occupation of the subject property. I find that they concluded a valid oral contract which they set out to perform with the commissioning of the valuation. It is clear to me that they were pursuing this contract with dispatch because all of the related events took place within a matter of a few days.

[49] The parties differ as to whether a contract existed between them. Ms. Williams says that one exists while Mrs. Quansah says no. Ms. Williams maintained that she had an oral agreement with Mrs. Quansah which contained 3 clear and precise terms; namely that they were to jointly instruct an expert property valuator to assess the value of the two-storey building constructed by Mrs. Quansah; that they would equally share the cost of the valuation; and that Ms. Williams would pay to Mrs. Quansah the assessed value of the property as compensation. Ms. Williams also claimed that she is entitled to possession on payment of such compensation. She testified that the agreement entailed that she 'pay out' Mrs. Quansah for her interest in the house.

[50] Ms. Williams argued that there have been acts part performance of the contract which permits her to seek an order for specific performance and/or damages. Mrs. Quansah is adamant that no such

oral agreement exists. She contended that sections 3 and 6 of the Registration of Documents Act⁶ mandate that a deed must be in writing, and therefore any agreement to transfer her property to Ms. Williams must be in writing. This submission ignores the principle inherent in the equitable doctrine of part performance. Likewise, it is trite law that parties may elect to make an agreement formally in writing; orally; or partly in writing and partly orally.⁷

- [51] Ms. Williams submitted that the case of **English Haven Limited v Registrars of Land**⁸, is authority for the proposition that the doctrine of part performance renders a contract enforceable even in the absence of a written memorandum, if the claimant has done acts which on a balance of probability can be shown to have been undertaken in reliance of a contract, and where it would in effect constitute fraud for the defendant to take advantage of the fact that the contract was not evidenced in writing. Mrs. Quansah acknowledged this to be a correct articulation of the law. There is therefore no merit to her contention that the agreement to transfer her property must be in writing. The correct position is that such an agreement is registrable under the Registration of Documents Act. It does not mean that the court will not give effect to an oral agreement that is supported by sufficient acts of part performance.
- [52] Mrs. Quansah submitted that section 4 of the Statute of Frauds provides that there can be no action on an agreement for sale of land unless the agreement is in writing and signed by the parties. She argued that notwithstanding this requirement, a court of equity may enforce such an agreement by granting specific performance if the claimant establishes that the agreement was partially performed. She cited in support the case of **Rawlinson v Ames**⁹. This is a correct statement of the law.
- [53] Partial performance may be established she submitted, by a claimant who proves (as in **Madison v Alderson**¹⁰ and **Caton v Caton**¹¹) that she engaged in acts that constitute part performance of the agreement which are;

⁶ Cap. 132 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

⁷ Halsbury's Laws of England, Vol. 22 (2019), para. 20.

⁸ ANUHCV2007/0277.

⁹ [1925] Ch. 96.

¹⁰ (1883) 8 App Cas 467.

- a) referable to the agreement, as in **Re Cronin**¹²;
- b) referable to the land; and
- c) are in furtherance of the agreement and not merely a recognition of its existence or contemplation.

[54] Mrs. Quansah argued that as stated by the House of Lords in **Madison and Alderson**, the acts of part performance must be 'unequivocally and in their own nature referable to'⁸ the agreement alleged. She noted that Ms. Williams' payment of half of the fee for the valuation was pleaded as an act of part performance of the oral contract. She submitted that this raises the question whether that payment was sufficient to evidence the existence of a contract. She reasoned that while it is arguable that such payment is referable to land, insurmountable hurdles exist to establishing that it qualifies as part performance and is referable to the alleged oral contract for the sale of the referenced two storey property.

[55] She contended further that Ms. Williams has not produced any evidence of acts of part performance which are relative to the possession, use and tenure of the subject land. She argued that Lord Selborne observed in the **Madison v Alderson** case that oral contracts have been enforced largely based on such acts of part performance. She reasoned that the payment relied on in this case was merely preparatory to the completion of a contract and does not amount to part performance of the alleged oral contract. She relied on the decisions in **New Hart Builders v Brindley**¹³ and **Daulia v Four Mill Bank Nominees Ltd**¹⁴.

[56] Ms. Williams rejoined that the case of **Steadman v Steadman**¹⁵ is instructive. She submitted that it held that in order to establish facts amounting to part performance, it was necessary for a plaintiff to show that he had acted to his detriment and that the acts in question were such as to indicate on a balance of probabilities that they had been performed in reliance on a contract with the defendant, which was consistent with the contract alleged. Quoting Lord Reid she argued:

¹¹ (1865) 1 Ch. App. 137.

¹² (1979) Ch 16.

¹³ [1975] Ch 343 at pgs. 352-353.

¹⁴ [1978] Ch. 231.

¹⁵ [1947] 2 ALL ER.

'If one party to an agreement stands by and lets the other party incur expense or prejudice his position on the faith of the agreement being valid he will not then be allowed to turn round and assert that the agreement is unenforceable. ... and it has become proverbial that courts of equity will not permit the state to be made an instrument of fraud.'¹⁴

[57] Ms. Williams submitted that other pronouncements by Lord Reid are just as applicable to the case at bar. In this regard, she highlighted his pronouncement:

'26. I am aware that it has often been said that the acts relied on must necessarily or unequivocally indicate the existence of a contract. ... if there were a rule that acts relied on as part performance must of their own nature unequivocally shew that there was a contract, it would be only in the rarest case that all other possible explanations could be excluded. In my view, unless the law is to be divorced from reason and principle, the rule must be that you take the whole circumstances, leaving aside evidence about the oral contract, and see whether it is proved that the acts relied on were done in reliance on a contract: that will be proved if it is shewn to be more probable than not.'¹⁶

[58] In **Steadman v Steadman**, Viscount Dilhorne adopted the learning contained in **Fry on Specific Performance**¹⁷ and rehearsed by Warrington LJ in **Chaproniere v Lambert**¹⁸ where four conditions are identified, which are necessary elements of part performance; namely:

- (1) the acts of part performance must be such as not only to be referable to a contract such as alleged, but to be referable to no other title;
- (2) they must be such as to render it a fraud in the defendant to take advantage of the contract not being in writing;
- (3) the contract to which they refer must be such as in its own nature is enforceable by the court; and
- (4) there must be proper parol evidence of the contract which is let in by the acts of part performance, ...'¹⁸.

¹⁶ At para. 26.

¹⁷ 5th Ed. (1911) p. 219, para. 580.

¹⁸ [1917] 2 Ch 356 at 361.

[59] The learned judge remarked:

'Every one of those four conditions is essential to enable the act relied on to be treated as part performance. It is not sufficient to prove acts referable only to the contract alleged and no other. They must be such as to render it a fraud in the defendant to take advantage of the contract not being in writing.'¹⁸

[60] I am guided by those principles and apply them to the circumstances in this case. The acts of part performance on which Ms. Williams relied, assist her only to the extent that she was the one undertaking those acts of performance. In this regard, she jointly made the arrangements for the valuator to value the property and she paid her share of his fee. Clearly, those acts relate to a contract regarding sale of the subject property by Mrs. Quansah to her and accordingly satisfy the first condition identified by Fry and Warrington LJ.

[61] Ms. Williams submitted that the payment of \$250.00 by each party represented that the cost of the valuation report was done in part performance of the agreement. She argued that she paid it in reliance on the agreement and thereby acted to her detriment. Mrs. Quansah argued that the act of paying for the valuation is unequivocal and cannot be considered as part payment of the alleged oral contract. She submitted that therefore there can be no order for specific performance. She submitted further that this is due to the uncertainty surrounding the price; and the requirement to pay the assessed price based on the agreed terms. She contended that if those terms are not agreed, the assessed price would either not be paid by Ms. Williams or accepted by her. She reasoned that the alleged contract is silent on what terms are to be further agreed, and that this introduces uncertainty into the purported agreement.

[62] Mrs. Quansah contended that the act of paying for the valuation does not amount to part performance of the agreement; cannot be taken as being referable to the alleged oral contract; and is not in furtherance of the alleged contract nor is it a recognition of its existence or its contemplation. She concluded that the allegation of the existence of an oral contract cannot be sustained; and therefore specific performance and damages are not available to Ms. Williams.

[63] Mrs. Quansah seeks to avoid the contract and the obligations which flow from it. In this regard, she

has placed reliance among other things, on the fact that the contract was not in writing. She has thereby become subject to and caught by the prohibition against perpetuation of fraud, described in Fry's second requirement. If she succeeded in doing so, it would certainly constitute a fraud on Ms. Williams who would be prejudiced thereby, simply because the contract was made orally.

[64] The court is at liberty to enforce an oral contract for the sale of land pursuant to its inherent equitable jurisdiction. Ms. Williams has carefully and cohesively outlined the express terms of the contract and supplied the specifics about a further term to be agreed in relation to the payment of the purchase price. She indicated that at their further meeting she undertook to pay the purchase price in a lump sum or by instalments over a period of time. That is a contract which the court may enforce. The third condition has been satisfactorily addressed in this respect. Moreover, Ms. Williams has supplied adequate parol evidence of the terms of her agreement with Mrs. Quansah.

[65] Mrs. Quansah argued that the court must take into account all relevant circumstances in determining whether the payment was a sufficient act of part performance. She cited the decision in **Steadman v Steadman**¹⁹. She submitted that the court must factor in Mr. Horne's statement that he encouraged her to pay half of the valuation fee. This has been done.

[66] In all the circumstances, this case embodies all of the requirements of part performance as described by Fry and Warrington LJ. This is an appropriate case therefore in which specific performance can be ordered in respect of the oral contract for sale of the subject property based on Ms. Williams' act of part performance. I so find.

[67] Mrs. Quansah argued that the lawyer who was allegedly present at the meeting between her and Ms. Williams prepared the defence and in it denied that any such meeting was held in his presence. Her contention that Mr. Dennie in his own right, denied being present at the referenced meeting is faulty in fact and in law. The defence in this matter is hers and not the lawyer's. He would have prepared it on her instructions and not from his perspective. There is no merit in that argument.

[68] Mrs. Quansah contended that Ms. Williams pleaded that 'The claimant will pay the Defendant the

¹⁹ [1976] AC 536 at 541.

assessed value on terms further agreed'²⁰. She submitted that there is no indication of the meaning of 'terms further agreed'. She argued that it is clear that something else had to be agreed by the parties related to the assessed value of the property. It seems to me that the statement is self-explanatory. What was to be agreed was how the payment was to be made, (i.e. in a lump sum, by instalments or otherwise). There is no mystery in the language.

[69] In a contract for sale of land, the essential ingredients are the description of the property, the price, and the parties. Based on the evidence led by Ms. Williams and the pleadings those elements were present. The terms on which payment would be made was not expressly stipulated. Ms. Williams said further terms were to be agreed. Mrs. Quansah argued that specifics are missing about what were those terms. It is trite law that contractual terms can be implied.

[70] At common law, terms may be implied into a contract which are reasonable and equitable; necessary to give business efficacy to the contract; are so obviously necessary that the need not be stated; do not contradict express terms and are capable of clear expression.²¹ Specifics as to how the purchase price for the land was to be paid, clearly satisfies those foregoing criteria. I find that the parties intended to agree the payment arrangements at a further date and that was what was intended by '... will pay the Defendant the assessed value on terms further agreed'.

[71] Mrs. Quansah submitted further that the express term of the alleged oral agreement does not definitively require Ms. Williams to pay the assessed value of the two storey property. She argued that there has to be an agreement of other terms before the assessed value can be paid. She reasoned that it therefore does not impose any obligation on Ms. Williams to pay her the \$65,470.00 unless other terms are agreed, which they were not. She argued that Ms. Williams is seeking to impose an obligation on her to accept that payment without expressly or by implication stating what terms are required to be further agreed before Ms. Williams pays that value. She submitted that since there is no obligation on Ms. Williams to pay the value without more, there can

²⁰ At paragraph 5 (c) of the Statement of Claim.

²¹ *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977) 180 CLR 266 at 282-283 per Lord Simon of Glaisdale; cited approvingly in *Attorney General of Belize v Belize Telecom Ltd*, [2009] UKPC 10.

be no obligation on her to accept payment of the assessed value. This contention is suitably addressed in the preceding paragraph. No further consideration is needed.

Miscellaneous

[72] Mrs. Quansah submitted that it was held in **Gibson v Manchester City Council**²² that there can be no award of specific performance unless there is complete and definitive contract. She argued that sections 3 and 4 of the **Real Property Act**²³ require any transfer of freehold land to be conveyed by deed. It should be noted that Ms. Williams does not contend that a transfer from Mrs. Quansah to her was ever effected. Those provisions are not applicable and do not assist the court.

[73] The foregoing analysis demonstrates that the parties concluded an oral contract which Ms. Williams partially performed by jointly (with her sister) authorizing Mr. Dennie to arrange for the valuator to inspect and appraise the two-storey concrete residence; and by paying her agreed 50% share of the fee charged for its preparation. I am satisfied that those acts constitute sufficient acts of part performance which are referable to the oral agreement. Mrs. Quansah's failure to accept the purchase price based on the assessed value constituted a breach of the contract.

Issue 2 - To what remedies, is Ms. Williams entitled?

[74] The court may grant any relief in law or equity which arises from the facts of the case. It may including an award of damages and/or an order for specific performance. Mrs. Quansah submitted that the court can resist making an order for specific performance of a contract if it is uncertain about its terms. She relied on the decision in **Douglas v Baynes**²⁴ where the Board refused specific performance because the price to be paid for shares was uncertain; and the case of **Heron Garage Properties Ltd. v Moss**²⁵ where specific performance was refused in respect of a contract which was subject to an unfulfilled condition precedent.

[75] In the case at bar, the parties agreed a formula for arriving at the purchase price and they followed

²² [1979] 1 All ER 972.

²³ Cap. 331 of the Laws of Saint Vincent and the Grenadines Revised Edition 2009.

²⁴ [1908] A.C. 477.

²⁵ [1974] 1 All ER 421.

that procedure. It cannot be said that the price was uncertain. It was to be arrived at by a clear and agreed method – by valuation by an expert property valuator jointly instructed by them. I make no finding that it was. I also make no finding that the contract was subject to an unfulfilled condition. This is not supported by the facts as found.

[76] Ms. Williams sought both damages and specific performance. The learning on those twin awards is that:

'The court gives specific performance instead of damages only when it can by that means do more perfect and complete justice': **Wilson v Northampton and Banbury Junction Rly Co**.²⁶

[77] Specific performance is a discretionary remedy which the court may grant in cases involving breach of a contract for the sale of land, if damages would not adequately compensate the aggrieved party for the loss.²⁷ Usually it is ordered in place of damages but may be ordered along with damages. Damages seek to put an aggrieved party in the position in which she would have been if the contract had remained intact. In this case, the area of land is so small that it is incomprehensible that it can conceivably support two separate households in an atmosphere of conflict and animosity.

[78] The size of the land may account for why the two houses adjoin each other. It strikes me that in view of the bad blood between the parties that it is just for the court to make an order for specific performance. Hopefully, such an outcome will enable the sisters to move on with their respective lives in different locations in this State and avoid the discomfort and ready opportunity for conflict and friction that existing in such close quarters have caused and would invariably occasion in the future.

[79] Both parties accept that Mrs. Quansah has improved the property since 2013 when the agreement was made. This would have affected the value positively. Likewise, with the passage of time, further appreciation would no doubt have been realized. Mrs. Quansah is entitled to receive the full

²⁶ (1874) 9 Ch App 279 at 284 per Lord Selborne LC.

²⁷ Hall v Warren (1804) 9 Ves 605.

value for her interest in the home. Another valuation is necessary.

- [80] It is established law that damages in these circumstances are aimed at putting the aggrieved party in the position in which she would have been if the defaulting party had not broken the contract. The court remains mindful that '... damages should not be awarded, unless perhaps nominally,' for a breach of contract which is 'distinct from the consequences of the breach'²⁸; and as compensation for 'real losses'²⁹. Ms. Williams has not alleged any such losses. I make no order awarding her damages.
- [81] Mrs. Quansah is required to arrange for a valuation of the two-storey house³⁰ to be valued by a licensed property valuator agreed to by her and Margaret Williams, such valuation to be conducted on or before 31st March 2020 and the fee associated with it is to be paid equally by Ms. Williams and Mrs. Quansah. Mrs. Quansah shall provide Ms. Williams with an original of the resulting valuation on or before 31st March 2020, and an original of the invoice for the charges or fees associated with its preparation.
- [82] Ms. Williams shall make payment to Registrar of the High Court by a cashier's cheque or banker's draft in the name of Cynthia Quansah for the full assessed value of the two storey house³⁰; and 50% of the fees associated with preparation of the valuation report. Mrs. Quansah shall quit and deliver up vacant possession of the two storey property situated at Upper Cane Hall and described in the Schedule to Deed No. 585 of 1994 by 1.30 p.m. on 29th April 2020; arrange for her servants and/or agents to do likewise; and deliver the keys to the referenced property to the Registrar of the High Court. The Registrar shall deliver the keys to the property to Ms. Williams; and the cheque or draft to Mrs. Quansah.

COSTS

- [83] Costs customarily follow the event. Ms. Williams is the successful party. She is entitled to receive prescribed costs. Mrs. Cynthia Quansah shall pay Ms. Margaret Williams prescribed costs of \$7,500.00 pursuant to CPR 65.5 (2) (b).

²⁸ *Farley v Skinner* [2001] UKHL 49 per *Lord Clyde*.

²⁹ *Rowley v Cerberus Software Ltd* [2001] EWCA Civ 78 per Sedley LJ.

³⁰ (i.e. excluding the value of the land)

ORDER

[84] It is declared and ordered:

- (1) Judgment is entered for Margaret Williams.
- (2) Margaret Williams owns the legal interest in the land situated at Upper Cane Hall and described in the Schedule to Deed No. 585 of 1994.
- (3) Cynthia Quansah owns the beneficial interest in the two-storey concrete building situated on the referenced property at Upper Cane Hall and registered by Deed No. 585 of 1994.
- (4) Cynthia Quansah shall on or before March 31st 2020:
 - a) arrange for a valuation of the referenced two-storey concrete building to be conducted by a licensed property valuator agreed to by the parties;
 - b) provide Ms. Margaret Williams with an original or certified copy of the said valuation and the invoice or receipt evidencing payment for the valuation services;by delivering them at the Law Chambers of Robertson and Robertson.
- (5) Margaret Williams shall on or before April 30, 2020, shall deliver to the Registrar of the High Court, a cashier's cheque or banker's draft in the name of Cynthia Quansah in the amount of:
 - a) the value of the referenced two-storey concrete building, based on the valuation ascribed in the valuation report referenced in sub-paragraph (b) of paragraph 4 of this order; and
 - b) 50% of the amount billed by the valuator for preparation of the valuation; based on the amount set out in the receipt or invoice provided to her pursuant to sub-paragraph (b) of paragraph 4 of this order.
- (6) Mrs. Cynthia Quansah shall by 1.30 p.m. on 29th April 2020, quit and deliver up vacant possession of the two storey property situated at Upper Cane Hall and described in the Schedule to Deed No. 585 of 1994; arrange for her servants and/or agents to do likewise; and ensure that the said building is substantially in the same structural condition as on the date of the valuation commissioned pursuant to paragraph 4 of this order; and deliver the keys to the referenced property to the Registrar of the High Court.

- (7) The Registrar shall on receipt of written notification from the legal practitioner on record for Margaret Williams, that there are no persons occupying the two-storey property at Upper Cane Hall, deliver to:
- a) Mrs. Cynthia Quansah or her legal practitioner on record, the cashier's cheques and/or banker's drafts referred to in paragraph 5 of this order; and
 - b) Ms. Margaret Williams the keys to the referenced two-storey building.
- (8) Cynthia Quansah is restrained from April 29th 2020, whether by herself, her servants or agents from remaining on, trespassing on, or interfering with Margaret Williams' enjoyment of the property at Upper Cane Hall described in the Schedule to Deed No. 585 of 1994.
- (9) Cynthia Quansah shall pay to Margaret Williams prescribed costs of \$7500.00 pursuant to CPR 65.5 (2) (b).
- (10) A penal notice in terms of CPR 53.3 (b) is to be endorsed on this order in respect of compliance with sub-paragraphs (4), (5), (6) and (7) of this order.

[85] I am grateful to the parties' legal practitioners for their written submissions.

Postscript

[86] When this matter came on for trial, it was discovered that the defendant has changed for her original lawyer and that no Notice of Acting had been filed by the current legal practitioner who had appeared on the defendant's behalf in the intervening period; and no order made for him to be substituted in place of the former lawyer. The commencement of the trial was suspended for a few minutes to facilitate the filing of the Notice of Acting.

[87] When the hearing resumed, the defendant acknowledged on oath that she had instructed him to act on her behalf in the proceedings between March 2018 through December 19th 2019 and that she ratified every action he had undertaken in that capacity during that period. An order was made

regularizing every order and action taken by the court during that time. It has since been served on the parties.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar