

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2016/0029

BETWEEN

HILARY BOWMAN

of Richland Park

CLAIMANT

AND

EUDENIA ARRINDELL

also known as

SHIRLEY EUDENIA ARRINDELL

of Arnos Vale

DEFENDANT

Appearances:

Mr. Parnel R. Campbell Q.C. with him Mrs. Cheryl Bailey
and Ms. Mandela Campbell for the claimant.

Ms. Paula David for the defendant.

2018: May 15

2019: Mar. 19 & 21

May 2

JUDGMENT

BACKGROUND

- [1] **Henry, J.:** This case involves a disagreement between neighbours over an alleged agreement for exchange of property at Arnos Vale, Saint Vincent and the Grenadines for one at Cane Hall. Dr. Hilary Bowman is the Director of Education for Seventh Day Adventist Schools in the Caribbean.

He claimed that for over 20 years he owned property at Arnos Vale comprising about an acre, which borders land that was registered in Ms. Eudenia Arrindell's name ('the disputed property'). A house is erected on her land. It was previously owned by her late mother Veronica Arrindell. Dr. Bowman alleged that in the late 1990s he held discussions with Veronica Arrindell regarding the possibility of acquiring the disputed property from her in exchange for another property elsewhere which had not yet been identified. It appears that she passed away without any firm agreement between her and Dr. Bowman.

- [2] Dr. Bowman asserted that he had similar discussions with Ms. Arrindell in or about March 2014. He alleged that Eudenia Arrindell proposed another property in Arnos Vale but he did not follow through with acquiring it for her, because of the substantial asking price. He asserted that he and Ms. Arrindell finally arrived at an agreement whereby he undertook to purchase a house for her at Cane Hall and to pay her the sum of \$40,000.00, in exchange for her transferring the disputed property to him. He averred that they entered into a formal contract to this effect. He claimed that he paid her \$20,000.00 as the first of two installments towards the \$40,000.00.
- [3] Dr. Bowman pleaded that in breach of the contract, Ms. Arrindell refused to turn over the keys to the disputed property and to accept the final sum of \$20,000.00. He brought this action seeking an order for specific performance of the contract; damages for breach of contract; alternatively an injunction to compel Ms. Arrindell to deliver the disputed property to him and costs.
- [4] Ms. Arrindell has resisted the claim. She testified that she was previously employed as a caretaker for an elderly lady. She was unemployed at the time of trial. She claimed that sometime before Christmas in 2015, Dr. Bowman told her that he would give her 'plenty "tousan" dollars and another house to live in if she would sign the house to him.' She pleaded that she agreed to sign a paper and went with Dr. Bowman to an office where she and he signed some papers. She alleged further that Christmas came and she received 'neither money, cash or (sic) the promised house.' She pleaded that she sought advice from her guardian J. Verol Soleyn who carried her to the house of one Ricky Burnett and subsequently to the offices of Fredericks Attorneys.
- [5] Ms. Arrindell claimed that by reason of her mental condition, she was not capable of understanding and did not understand Dr. Bowman, his witnesses and their exhibits. At the trial, she did not

pursue the assertion that she was suffering from a diminished mental condition by reason of some physical, psychological or psychiatric impediment. Ms. Arrindell averred that Dr. Bowman secured her signature to 'an unsigned, undated, legally un-specifiable paper-writing labeled by him as a "substitute" for an invalid paper writing bearing' her signature. She denied receiving any "cash" "money" or money's worth from Dr. Bowman.

ISSUE

[6] The issues are:

1. Whether Ms. Eudenia Arrindell entered into a legally binding agreement with Dr. Hilary Bowman to exchange her residence at Arnos Vale for a residence at Cane Hall?
2. If so, whether Eudenia Arrindell breached the contract?
3. To what remedies, if any, is Mr. Bowman entitled?

ANALYSIS

Issue 1 – Did Eudenia Arrindell enter into a legally binding agreement with Hilary Bowman to exchange her residence at Arnos Vale for a residence at Cane Hall?

- [7] Dr. Bowman has been an educator for over 28 years, earned a PhD. in School Administration and Policy and holds a Master degree in Curriculum Instruction and a Bachelor's degree in Education and History. He testified that his property in Arnos Vale is vacant land which is not used for any commercial purposes, grazing animals or cultivation. He indicated that at present he is not looking at developing it commercially and did not know what would be his intentions for its use in the long term.
- [8] He accepted that the disputed lot and his are in excellent locations for commercial development. He opined that there has been a decline in the transformation of that area from residential to commercial within the past 5 to 6 years. He noted that there is a supermarket, two hardware stores and a doctor's office in the vicinity both of which have been there for the past 10 years or so. He did not agree that land in that neighbourhood is the most valuable in all of Arnos Vale.
- [9] Dr. Bowman recalled that around March 2014 after Veronica Arrindell's death, Ms. Eudenia Arrindell re-opened discussions with him and expressed the desire that he should acquire a property and

exchange it with her for the disputed property. He explained that the disputed property consists of a one-storey building with two bedrooms and one bathroom. He claimed that Ms. Arrindell told him that she wanted a house with at least four bedrooms in exchange for her property.

- [10] Dr. Bowman stated that he contacted real estate broker Danno Charles. He recalled that Mr. Charles and Ms. Arrindell's son Kendall Arrindell and her architect Dwayne Charles all collaborated in searching for an appropriate property to be acquired by him in exchange for the disputed property. He indicated that one was located in Arnos Vale; and he and Ms. Arrindell had executed a sales agreement in respect of that property. However, when he inquired about purchasing it, he learnt that it had been sold.
- [11] Dr. Bowman said that subsequently the parties identified a suitable property at Cane Hall comprising 4,396 square feet, on which was situated a two-storey, five bedroom house. He testified that Ms. Arrindell expressed satisfaction with the Cane Hall property as did her son Kendall Arrindell and her architect Dwayne Charles. Dr. Bowman explained that the original sales agreement was amended; and that he and Ms. Arrindell entered into a formal contract by way of the Amended Sales Agreement which they signed before a Notary Public on 21st October 2015. Dr. Bowman indicated that the Deed of Exchange was prepared by his niece Mrs. Roxann Williams who is a lawyer.
- [12] He explained that the amended agreement obligated him to purchase the Cane Hall property, and then to exchange it with Ms. Arrindell for the disputed property. He added that it also provided that he would pay Ms. Arrindell the amount of \$40,000.00. He stated that when they met at Mrs. Williams' office, Ms. Arrindell twice declined Mrs. Williams' invitation to retain her own lawyer. He recalled that Mr. Dwayne Charles was present at the time.
- [13] Dr. Bowman stated that in pursuance of that agreement, he purchased the Cane Hall property from Liston Phillips also known as Leston Phillips. He explained that he purchased it with the intention of exchanging it for Ms. Arrindell's property. He produced a copy of Deed Number 253 of 2016 which evidenced the purchase at a price of \$355,000.00. Dr. Bowman averred further that he transferred the Cane Hall property to Ms. Arrindell and she simultaneously transferred the disputed property to him by Deed of Exchange Number 256 of 2016, dated the 1st day of February 2016. A copy of that

deed was produced. It reflects that it was signed by Dr. Bowman and Ms. Arrindell. It was registered on 3rd February 2016.

- [14] He recounted that Mrs. Williams read over and explained the nature and contents of the Deed of Exchange to Ms. Arrindell, Mr. Charles and him before it was signed. He signed the Deed at Mrs. Williams' office in the presence of her Secretary Ms. Shelly Ann Wright. He recalled that Mrs. Williams arrange for her clerk to accompany Ms. Arrindell to the Registry to sign the Deed in the Deputy Registrar's presence. Dr. Bowman acknowledged that Mrs. Williams did not bill him for the legal services she provided for consultation or preparation of the Deed of Exchange.
- [15] Mrs. Williams was one of Dr. Bowman's witnesses. She recalled that he contacted her to act on his behalf to purchase a property situate at Arnos Vale from Ms. Arrindell where she was living with some of her children. She stated that they had already executed an Agreement. Mrs. Williams remembered that they both visited her chambers on or about 20th day of November 2015 with Dwayne Charles.
- [16] She said that she asked Ms. Arrindell whether she had a lawyer regarding the transaction, to which she replied 'no, she did not want to pay for a lawyer'. Mrs. Williams recalled that Ms. Arrindell told her that she and Mr. Bowman had already agreed what would happen and had decided on the property he would buy for her to move into. Mrs. Williams said that she advised Ms. Arrindell that she had the right to seek independent legal advice at any time, but she again said that was not necessary.
- [17] She testified that she explained to Ms. Arrindell that Mr. Bowman would purchase the other property she wanted to move into and once that purchase was completed and the Deed registered, a Deed of Exchange would be registered whereby the Arnos Vale property she was presently living in would be exchanged with the one Mr. Bowman had purchased. She indicated that also informed her that she would become the owner of the new property and Mr. Bowman would then become the owner of the disputed property.
- [18] Mrs. Williams stated that she further informed Ms. Arrindell that she could have received the

purchase price for her property with which she could then buy the other property or any other property. She said that Ms. Arrindell told her that she wanted a property to move into and that Mr. Bowman and she had already settled on the property she would move into. Mrs. Williams said that Ms. Arrindell told her that she was very pleased with this property as it was bigger than the one she was living in and was not on the main road.

[19] Mrs. Williams explained that she told Ms. Arrindell that there were presently tenants living in the other property she wanted and 'we' would have to ensure there was vacant possession before the Deed from the other seller Mr. Liston Phillips to Mr. Bowman was registered; and thereafter for the property she was living in to be exchanged with the one Mr. Bowman was purchasing for her. She added that she further informed Ms. Arrindell that she would try her best to have the transaction completed so she could move into the other property before Christmas. She said that Ms. Arrindell asked her to please hurry it along as she was sick and fed up of the dust and smoke where she was now living; and of the motor cycles speeding on the road at all hours, as she lived on the main road.

[20] Mrs. Williams recalled that there were unavoidable delays in finalizing the purchase of the Cane Hall property including getting vacant possession. She testified that on or about the 12th January 2016, Ms. Arrindell, Mr. Bowman and Mr. Dwayne Charles again came to her office and Ms. Arrindell was anxious to move into the new property. She said that she notified her that they had been informed that the tenants in the Cane Hall property would be leaving within the next two weeks. She said that the Deed of Exchange had been prepared and it was again explained to Ms. Arrindell that once the tenants had left the other property and vacant possession had been secured, 'we' would register the other Deed in Mr. Bowman's name and 'transfer the property she was living in to Mr. Bowman and she would become the owner of the new property.'

[21] Mrs. Williams testified that Mr. Bowman gave Ms. Arrindell a cheque for \$20,000:00 which she (Ms. Arrindell) signed for in her (Mrs. Williams') office. Mrs. Williams stated that her office received the keys for the Cane Hall property on Friday 29th January, 2016 and she proceeded to register the Deed from Mr. Phillips to Mr. Bowman on said day. She explained that the Deed of Exchange from Mr. Bowman to Ms. Arrindell was registered on the next working Monday, 1st February 2016.

- [22] Mrs. Williams stated that it has been brought to her attention that her integrity has been brought into question and that it is being alleged that there was something improper about the process, in that Ms. Arrindell was not mentally competent to enter into the arrangement and did not have the benefit of independent legal advice. She was adamant that at no time did it appear to her that Ms. Arrindell did not understand what was taking place. She reiterated that Ms. Arrindell refused the opportunity to get a lawyer to represent her in the matter. She voiced strong exception to the insinuation that she has been involved in anything improper or unethical. She stated that she has acted in the matter as she has done on previous occasions without charge to her uncle. She stressed that she did not and has not personally benefitted from the transaction.
- [23] Ms. Arrindell accepted that she signed it. She recounted that after her mother passed away, Mr. Bowman asked her if she would sell him the house. She insisted that she did not approach Mr. Bowman and ask him to buy the house. She recalled that Mr. Bowman told her that he would buy another house for her to exchange for her house. Dr. Bowman denied that he approached Ms. Arrindell. He said that she came to his office in Middle Street with 3 children after her mother's death and told him that she has a property that he could purchase for her in exchange for her Arnos Vale property.
- [24] Ms. Arrindell testified that the first paper she signed 'was the one dated 15th October, 2015'¹. That agreement related to a property situated at Arnos Vale and was signed by both parties. In it Dr. Bowman undertook to purchase the Arnos Vale property and exchange it for the disputed property. The agreement also obligated him purchase a property of similar value for Ms. Arrindell if the Arnos Vale property was not available and to pay her the additional sum of \$200,000.00.
- [25] Ms. Arrindell stated that the second paper she signed was the Amendment to Agreement. It was signed by both parties. It purported to vary the terms of the previous agreement by substituting the Arnos Vale property for the Cane Hall property and by reducing the cash payment from \$200,000.00 to \$20,000.00 in recognition that the Cane Hall property was more valuable. Ms. Arrindell said that she signed a third paper which '... was the deed of exchange registered as deed number 256 of 2016.' Ms. Arrindell averred further that she did not get a lawyer to advise her

¹ Attached to Mr. J. Verol Soleyn's affidavit which was filed on 10th March, 2016.

before she signed any of the papers concerning Mr. Bowman, because she did not have the money to pay a lawyer.

[26] She said that she looked at some houses before seeing the one at Cane Hall. She deposed that when she realized how the downstairs of the house at Cane Hall was 'really situated' she did not want to move into it. She recalled that the downstairs had water packages on the wall. She claimed that she asked the person who was then occupying the downstairs about the 'water packages'. Ms. Arrindell explained that one Sunday afternoon she was watching television and saw a Doctor on a programme, who said that 'water packages' are a dangerous thing. She deposed further that because of this she did not want the house at Cane Hall because it is dangerous to her health. She added that she preferred to stay where she lived. She averred that she is comfortable there and she just wants to stay in her house and not move at all. She attested that she already knows the house and the area inside out.

[27] She described the area where the disputed property is located. She noted that her house at Arnos Vale is next to the highway and close to Agua and Rent and Drive - two entertainment places. She said that at night both establishments hold events. She claimed that she is not bothered so much by the noise except for when they have karaoke. She admitted that she has complained about the noise from 'General and Rental Drive', a big hardware place close to her house. She stated that right about now the noise from the traffic is okay. She claimed that it disturbs her later (presumably in the day). She noted that 3 elderly ladies live below her whom she has known for a long time. She regarded them as her good neighbours. Ms. Arrindell indicated that she is studying what effect it is going to have on them when Mr. Bowman takes over the disputed property.

[28] She deposed that she did not think it will be good for the ladies if she moves out and let Mr. Bowman have the disputed property. She reasoned that if he takes over there she did not know what kind of structure he will put down. She considered that he might end up bringing in cement.

[29] When asked about some affidavits filed by her children in this matter, she said that her lawyer had read them to her. Asked to comment she stated that she would not mind having a bigger house to accommodate her children. She said however that they must come and face that. She reasoned

that she did not want 'to come and then they get the benefit and I deh in Limbo Street.' She was of the view that her children are only concerned with themselves and their comfort;' and 'that is all they talk about in the affidavit. They don't talk about how anything will affect' her.

[30] Ms. Arrindell testified that she is very frightened that Mr. Bowman would put her out of her house. She said she told Mr. Soleyn about it and he took her to see the lawyer Mr. Bayliss Frederick who sent her to see Dr. Amrie Morris-Patterson. She indicated that Dr. Morris-Patterson spoke to her and sent her to see Miss Marise Butler who spoke to her and gave her some test to do. Ms. Arrindell also spoke of seeing Dr. Wayne Murray who also gave her some tests to do. Mr. Bayliss Frederick, Dr. Morris Patterson, Ms. Butler and Dr. Murray did not testify at the trial. Although Ms. Arrindell pleaded in her defence that she was suffering from diminished mental capacity, no such evidence was led. I therefore make no finding that Ms. Arrindell is or was at the material times labouring under any such infirmity of the mind.

[31] Under cross-examination Ms. Arrindell admitted that she reads the Bible and understands what she is reading sometimes. She indicated that her lawyer read her witness statement to her. She admitted administering her mother's estate and signing the Oath of Administration leading to the Grant of Letters of Administration. When asked what she meant by 'gross value of the estate' on the Oath, she stated that her mother left nothing else but the house on the disputed property. She was shown the Deed of Exchange that she signed with Mr. Bowman and she identified it and said that she recognized it.

[32] Ms. Arrindell testified that years before, she had made arrangements with Dwayne Charles to draw some plans for her. She recalled that at her request he was helping her to find a place so that Mr. Bowman could buy it and exchange it with her for her house at Arnos Vale. She stated that her place at Arnos Vale has two bedrooms and she wanted someplace bigger to accommodate her five children. She said that she told Mr. Bowman she wanted a house that was large enough for her children.

[33] She recounted that the floor of the Arnos Vale house is of terrazzo. She was questioned about it and she explained that she likes aspects of terrazzo but not others. She said that when water is

spilled on it, one cannot tell and that would lead to falls. She asserted that after a while terazzo looks ugly, and that the terrazzo in her home looks ugly at present and she does not appreciate it. Regarding the transaction with Dr. Bowman, she maintained that she did not receive advice from a lawyer. She added that she got advice from someone but could not recall who advised her.

[34] Under cross-examination, she accepted that she received \$20,000.00 from Dr. Bowman which went into her bank account at RBTT. She said that she did not know what happened to that money and whether it was used up. She stated that she no longer has that bank account because 'it died out'. She acknowledged that when she had the account she used to go and do her banking business there. However, she denied withdrawing any of the \$20,000.00 from her account.

[35] Bailiff Marvin Mulcaire testified that on 8th February 2016, and at the request of Mr. Dannol Charles of Richland Park, he personally delivered a letter dated 3rd February 2016 to Ms. Arrindell at her home at Arnos Vale, which the Defendant accepted. He produced a copy of the letter. It was on the letterhead of DDP Sales and Marketing and signed Dannol Charles. In it, Mr. Charles wrote that 'the transaction relating to the purchase of your property at Arnos Vale Deed #969 of 2005, by deed of exchange between you and Hillary Bowman has been completed.' It invited Ms. Arrindell to collect a cheque for \$20,000.00 from him at her earliest convenience.

[36] Mr. Mulcaire averred further that on 11th February 2016, at the request of P. R. Campbell & Co, legal practitioners for Dr. Bowman, he delivered to Ms. Arrindell at her home in Arnos Vale, a letter addressed to her dated 10th February 2016 and signed by Mr. Parnel R. Campbell Q.C.; and an envelope containing a bunch of house keys. He said that acting on instructions, he told Ms. Arrindell that those keys were the keys for the dwelling house at Cane Hall. He produced a copy of the letter. It appears to be signed by Mr. Parnel R. Campbell Q.C. In it, Ms. Arrindell was being invited to honour her obligations to deliver vacant possession of the disputed property at Arnos Vale and to collect the keys to the Cane Hall property. Mr. Mulcaire testified that Ms. Arrindell refused to accept the letter or keys from him.

[37] He stated that he returned to Ms. Arrindell's home at Arnos Vale on 12th February 2016, at the request of P. R. Campbell & Co. He explained that he took with him an envelope containing a copy of the referenced letter from Dannol Charles addressed to Ms. Arrindell and containing a cheque

for \$20,000.00. Mr. Mulcaire exhibited a copy of a cheque. He said that he met Ms. Arrindell and her son. He recalled telling her in her son's presence that he had a letter for her containing a cheque for \$20,000.00 in connection with her arrangements with Hillary Bowman.

[38] Mr. Mulcaire admitted that he did not open the envelope but attempted to hand it to Ms. Arrindell who refused to accept the envelope from him. By his own admission, Mr. Mulcaire did not see the contents of the envelope. For obvious reasons, this court is unable to find that the envelope which Mr. Mulcaire attempted to hand to Ms. Arrindell contained the letter or cheque described by him.

[39] Mr. Verol Soleyn is a woodworker. He owns and operates his own business at Arnos Vale within 2 minutes' walk from the disputed property. He testified on Ms. Arrindell's behalf. He indicated that Ms. Arrindell used to take care of his wife's aunt who was a bedridden invalid, now deceased. He recalled that Ms. Arrindell came to see him in November 2015. He observed that she seemed distressed. She showed him some documents (including a copy of a cheque) which he said caused him some concern. He expressed the view that he was fearful that Ms. Arrindell was being taken advantage of. He stated that he considered it wise to get legal advice. Consequently, he spoke with someone who was trained in the law and subsequently accompanied Ms. Arrindell to see Mr. Bayliss Frederick, a senior lawyer.

[40] Mr. Soleyn deposed that he accompanied Ms. Arrindell to all of her consultations with Mr. Frederick and his daughter Ms. Vynnette Frederick, a lawyer herself. He averred that he went with her because he believed that she needed assistance to explain herself because she is not well educated and is not highly intelligent. He stated that Ms. Arrindell agreed to commission a Chartered Valuation Surveyor Mr. Chris Browne to appraise the value of the disputed property.

[41] He said that Mr. Browne produced valuation report dated 28th December 2015 which set the property's value at \$428,000.00, a value significantly higher than the one prepared by Dr. Bowman's valuer, Mr. Franklyn Evans who valued the disputed property at \$360,000.00 as at October 8th 2015, a difference of \$68,000.00. He admitted that he had no formal training in assessing the value of property. He recalled that when Ms. Arrindell first came to see him the house on the disputed property was dilapidated but livable. He observed that the external ceilings

to the house were falling apart and there were concrete blocks holding down the roof. He testified that he went inside when Mr. Browne was valuing it and he noticed that the cupboards in the kitchen were falling apart.

[42] Mr. Soleyn denied that he was interested in purchasing or otherwise acquiring Ms. Arrindell's property. He asserted that he does not have money to invest in her property. He asserted that he held no grudge against Dr. Bowman and stated that he has never had any disagreement with him. He opined that he believed that Ms. Arrindell is vulnerable because of 'her lack of education and her below par intelligence'. He acknowledged that he is not a psychologist and has never studied psychiatry. Mr. Soleyn gave his testimony in a frank and straight forward manner. He struck me as a man of conviction. I believe that he held genuine concerns about Ms. Arrindell's welfare and was concerned that she might have gotten a raw deal.

[43] For his part, Dr. Bowman said that he has known Ms. Arrindell for about 20 years. He maintained that she appeared to be well-educated, able to live within a society and make intelligent decisions. He stated that she did not strike him as someone who did not have an average level of education. He defined 'average level of education' as one which would endow the subject with the ability to communicate and live comfortably among other individuals. He declined to assign a grade level to that descriptor. Dr. Bowman said that regarding his dealings with Ms. Arrindell, it was difficult for him to say whether she appeared well versed in business affairs because he had not spent a lot of time around her except in relation to the transaction involving the exchange of the disputed property.

[44] Dr. Bowman testified that he believed that Ms. Arrindell knew the value of the disputed property and all about the transaction because when she spoke to him she said that she would not make any decisions except she had an advisor – Mr. Dwayne Charles – and her first son Kendall Arrindell, and she followed through. Dr. Bowman said that he thought that to be highly intelligent of her to make such a decision. He commented that in his dealings with Ms. Arrindell, her son Kendol Arrindell and Dwayne Charles they sounded reasonably intelligent. He indicated that he held no discussions with Ms. Arrindell in the absence of her son and Mr. Charles.

[45] Kendol Arrindell, Dwayne Charles and Dannol Charles were called as witnesses for Dr. Bowman.

Mr. Arrindell is Ms. Arrindell's son. He is 35 years old. He averred that as far as he is concerned his mother has no mental problems. This is very telling. He explained that he was not raised with his mother but with his now deceased aunt Mildred Craig. He indicated that he lives in her (his aunt's) house at Arnos Vale. He acknowledged that he sometimes stays at the Cane Hall property. He stated that he was not helping his mother to negotiate the exchange of the properties with Dr. Bowman. He added that they all dealt with it as a family. He indicated that he was present each time his mother negotiated with Dr. Bowman for the exchange of the properties.

[46] Mr. Arrindell indicated that he left school at the Primary school level. He seemed to be of average intelligence and did not appear to be suffering from any intellectual challenges. He testified that Dr. Bowman sourced a property at Cane Hall between late 2015 and early 2016 and offered to purchase it for exchange for the disputed property and \$40,000.00. He said that his mother agreed and the deal went through based on the agreement between her and Dr. Bowman. He averred that his mother was at all times advised by him and Mr. Dwayne Charles. He recalled that on the occasion of the signing of the Deed of Exchange Mrs. Williams asked his mother if she wanted a lawyer to represent her and she replied in the negative twice.

[47] Mr. Arrindell said that his mother was extremely happy with the cane Hall property. He expressed the view that it is far superior to the disputed property in size, build, value and overall quality. He admitted on cross-examination that he has never owned a home of his own; has not tried to buy a house or land for himself; has no idea how much a house or land in Arnos Vale would cost; and did not know the value of the disputed property or the Cane Hall property when he was having the discussions. He agreed that he did not hire a valuer to figure out the value of either property and did not know if his mother had had either property valued. He accepted that he did not advise his mother to value either property.

[48] He stated that the doors and windows on the Cane Hall property are in good condition and none are rotting; and that the kitchen door has not been repaired or replaced since he has been there. He accepted that there is a problem with the plumbing but said it was nothing big to complain about. He testified that sometimes the water pressure in the pipes causes them to burst and instead of calling a plumber he repairs them himself. He and Dwayne Charles indicated that there is mold at the Cane Hall house.

- [49] Mr. Dwayne Charles is an Architect, Draftsman and contractor. He testified that he met Ms. Arrindell for the first time in or about 2006 or 2007. He recalled that she telephoned him and made an appointment for him to visit her at her home in Arnos Vale. She told him that she wanted him to draw a plan for her to do some renovations to the house.
- [50] When he got there, she showed him around the house which consisted of a single-storey concrete building with two bedrooms, one bathroom a kitchen dining room, living room and small porch. He stated that the building was in average condition but the roof and eaves showed signs of deterioration. He explained that Ms. Arrindell told him that she wanted to put on an upstairs to the building with enough bedrooms so that all of her children could live at home with her. He completed the plans pursuant to her instructions and was paid by Ms. Arrindell for the work he did.
- [51] Mr. Charles said that he next heard from her in or about 2013 when she visited him at a job site in Prospect. She told him she wanted another plan drawn with more bedrooms. He set up a meeting with her and the children following which he produced another set of plans. He recalled that in September or October 2015 he received a telephone call from Ms. Arrindell who explained to him that Dr. Bowman wanted to purchase her home and she had asked him to find a suitable property for which to exchange it. He claimed that she told him that she trusted his judgment.
- [52] He described further interactions with Ms. Arrindell and Dr. Bowman including one in which Dr. Bowman took him to see a property in Dascent Cottage close to the Prime Minister's residence. He said that he told Dr. Bowman to continue looking because he would not recommend that property to Ms. Arrindell because it needed too much work. He recounted that subsequently Dr. Bowman took him to see the Cane Hall property and he considered it to be almost perfect. It had 5 bedrooms and was located about 3 minutes' drive from the disputed property. He said that he honestly believed that it was an unbelievably good deal.
- [53] He invited Ms. Arrindell and her sons Kendol and Forrell to look at it. He said the other two children stated that they would go along with any decision made by their mother, Kendol and he as the advisor. He testified that Ms. Arrindell was happy with that property and she later signed the Deed of Exchange. He said that Dr. Bowman offered an extra \$20,000.00 and later another \$20,000.00 to assist with the family's relocation to their new home. He said that he was present when Dr. Bowman gave Ms. Arrindell a cheque for \$20,000.00 which was deposited into her account at

RBTT Caribbean Bank Limited. He recalled that when Dr. Bowman asked Ms. Arrindell if she had a lawyer she replied that she doesn't want one because 'they does take too much money which she don't have to pay.'

- [54] He was present when the Deed of Exchange was signed in the presence of Kendol Arrindell and Dr. Bowman. He explained that Mrs. Williams asked Ms. Arrindell if she had legal representation and heard her reply 'I don't want no lawyer. Dwayne is here to help me make my decision'. He added that by 'Dwayne' she was referring to him.
- [55] He acknowledged that there is a river behind the Cane Hall property and that there is no retaining wall to protect the house and the land. He admitted that on inspecting it he noticed a few minor defects, but nothing that would cause major structural damage. He observed that the porch area had a few cracks because of the long exposure to moisture. He said that the doors were in fairly good condition, the kitchen door was slightly damaged because of exposure to rain water; and the downstairs walls and centre retaining wall had a 'little bit of mold'. He did not see any defects in the plumbing.
- [56] Mr. Dannol Charles described himself as a real estate broker. He admitted that he had no formal training in that field. He testified that he is aware that property located close to the disputed property was sold for about EC\$42.00 per square foot about 5 or 6 years ago. He opined that land in that vicinity might be the most valuable land in Arnos Vale because it has the potential to become a great city and a better developed area. At the same time, he acknowledged that it was being used more and more for residential purposes and this could negatively affect the price.
- [57] He admitted that he located the cane Hall property. He observed then that the paint was flaking off and one of the doors appeared to be breaking off. He indicated that when he went here at first he did not see any mold but when he returned with Ms. Arrindell, Mr. Kendol Arrindell and Mr. Dwayne Charles, Mr. Charles drew it to his attention.
- [58] Dr. Bowman contended² that the parties entered into an enforceable and legally binding contract for exchange of land. He insisted that he is therefore entitled to an order for specific performance of the contract for exchange of the respective properties. Ms. Arrindell submitted³ that 'where a

² At paragraph 9 of his Pre-trial memorandum filed on 10th January 2018.

contract although not actually fraudulent, is one in which the parties are not on equal footing, where the person seeking to enforce the contract is aware of the value of the subject matter of the contract and the other party is unaware of its value and where the contract price appears to be an undervalue, an application for specific performance will be denied.’ She cited in support the case of **Falcke v Gray**⁴.

[59] In determining whether Dr. Bowman and Ms. Arrindell concluded a legally binding agreement for the exchange of the subject properties, the Court must consider the applicable legal principles. It must examine the whole course of their dealings in relation to the subject matter to decide if they finalized a binding agreement and if so on what terms.⁵

[60] It is established in law that a contract is made between parties where three main elements exist. The agreement is formalized and becomes effective where:

1. one side makes an offer which is unequivocally accepted by the other side;
2. the parties all intend to enter into legal relations; and
3. the agreement is made under seal or is ‘supported by consideration’⁶.

[61] In the case at bar, Dr. Bowman and Ms. Arrindell are agreed that the Deed of Exchange was executed by them. The copy which was produced in court reflects that it was made under seal. On its face, it revealed that Dr. Bowman agreed to exchange a house and \$40,000.00 for the disputed property from Ms. Arrindell. This exchange would supply ‘consideration’. The evidence demonstrated that consideration was discussed between the parties and formed part of their negotiations. It follows that the impugned agreement satisfies the third element identified immediately above.

[62] The parties are at variance in respect of the other two elements which are essential to a finding that

³ In her Pre-trial memorandum filed on 16th March 2018.

⁴ 62 E.R. 250.

⁵ Chitty on Contracts; para. 52.

⁶ Chitty on Contracts, 24th Ed. para. 2.

they entered into a valid contract. In this regard, Ms. Arrindell submitted that she does not dispute signing the Deed of Exchange and the Written Agreement. She seeks to avoid its terms. In this regard, she contended that she possesses lower than average intellectual abilities and that her intellectual impairment is patent. She argued that Dr. Bowman being a highly qualified educator must have been aware of her intellectual impairment. She contended that when she executed the Deed of Exchange and the Written Agreement she did so uninformed and implied that she did so while laboring under a misunderstanding as to its nature and effect. She resisted Dr. Bowman's claim for specific performance on the additional basis that her property is worth more than the property and cash which he purported to exchange for it under the Deed of Exchange and the Written Agreement.

[63] In her Defence⁷ Ms. Arrindell pleaded at paragraph 3 and in the final sub-paragraph (d):

- '3. At all material times, Particularly at the several times the Claimant spoke or had physical contact with the Defendant she was not capable of understanding and did not understand the Claimant and the witnesses and the exhibits of and on behalf of the Claimant by reason of her mental condition AND this was known by the Claimant.'

PARTICULARS

- (a) The claimant by his own confession is ... by occupation a "Director of Education for the Caribbean Union Conference of Seventh Day Adventists and is responsible for 52 School and one University" as stated at paragraph 15 of his herein Affidavit dated 19th February 2016. Of such education and day to day practice, the Claimant is a repository of knowledge and an intelligent professional who must have evaluated the Defendant's mental capabilities and must have discovered her incapacity to understand a transaction, in which the intelligent Claimant handed the Defendant a photocopied cheque which he must know, is of no value whatsoever.'

[64] She thereby signified that she and Dr. Bowman are unevenly matched intellectually and further that by reason of her compromised mental capabilities she did not understand Dr. Bowman or his witnesses and the documents which he has exhibited in this case. She pleaded further that apart from Mr. Joseph Soleyn, she never appointed anyone to be her agent or advisor. She did not say

⁷ Filed on 9th March 2016.

this in her testimony. She acknowledged that Mr. Charles was helping her to find a place so that Mr. Bowman could purchase it to exchange for her Arnos Vale house. She admitted wanting a bigger house and that she told Mr. Bowman that she wanted a place with enough room to hold her children. The pleadings also express the notion that Dr. Bowman was duty bound to evaluate her mental abilities before concluding the contract with her. No legal authorities were submitted in support of that contention.

- [65] Ms. Arrindell testified that she attended the Kingstown Methodist School Sion Hill Government School and Peters Vale Primary School but did not complete primary school because she had difficulty learning. She averred that she was never able to pass her end of year examinations at school but was promoted to higher grades because of her age. She asserted that she got as far as Junior 4 and dropped out of school. She asserted that she has stayed away from her home at Arnos Vale and lives elsewhere because her children keep nagging her at home. She stated that she feels as if she is 'on the roof top just ready to fall down.'
- [66] Ms. Arrindell's pleadings and submissions suggest that she is relying on the defences of unconscionable bargain and *non est factum*. She submitted that the 'contract' with Dr. Bowman is not enforceable for the reasons she has asserted. The expression '*non est factum*' is a plea raised by a party who asserts that a document is not 'her deed'. It arises and is sustainable in situations where the party relying on it establishes that when she signed a 'document' she thought that it had a particular character or effect and she has since discovered otherwise. When invoked, it has the effect of refuting that the person intended to enter into legal relations in respect of that particular contract. Ms. Arrindell is therefore contending that she did not have the requisite intention with respect to the impugned Deed of Exchange and that there was no unequivocal acceptance of the offer.
- [67] Dr. Bowman countered in his Reply⁸ that Ms. Arrindell's 'difficulty grasping legal jargon in the mass of documentation related to property sales' could not have prevented, and in the circumstances, did not prevent her from entering the agreement with him to exchange properties, assisted as she was by her children and the architectural draftsman Mr. Dwayne Charles whom she had engaged.

⁸ Filed on 9th March 2016.

He (Dr. Bowman) pleaded further that he rejected the unfounded and absurd suggestion that Ms. Arrindell did not understand the transactions by reason of mental incapacity.

[68] He added that the Cane Hall property has been described by one of Ms. Arrindell's sons as far superior in size, build, value and overall quality to her former home. Dr. Bowman pleaded that Ms. Arrindell fully understood the nature of the Deed of Exchange and was at all material times advised by her own adult children and independent draftsman; twice declined to avail herself of the services of her own lawyer and must therefore be made to honour the commitment she made.

[69] Dr. Bowman contended that Ms. Arrindell's pleadings appeared to have raised the defence of '*non est factum*'. He submitted that 'the pith and substance of her Defence is that she was "incapable of appreciating the full nature and import of the alleged contract" between them. Dr. Bowman submitted further that the essence of *non est factum* is the allegation that a party who has signed a document did so in the genuine belief that the document was radically different in character and effect from what the person signing it thought it was. As the Court is fully aware, the literal translation of the phrase "*non est factum*" is this: "*it is not my deed*".

[70] He argued that Ms. Arrindell made no allegations in her witness statement or oral testimony that she did not know that when she signed the Deed of Exchange that she was not aware of the nature of the document she was invited to sign, and did sign. He contended that the Deed of Exchange reveals that Ms. Arrindell signed it at the Registry in the presence of the Deputy Registrar. He submitted that the Deputy Registrar presumably would have ascertained from Ms. Arrindell that she knew what she was signing.

[71] He referred to the acknowledgement endorsed on the Deed of Exchange and signed by the Deputy Registrar. It reads simply:

'Acknowledged by the within named Eudenia Arrindell aka Shirley Eudenia Arrindell as and for her act and deed this 12th day of January ...'.

The endorsement appeared to have been partly typed on the document, and in respect of the name and date partly hand-written by someone. The Deputy Registrar did not testify.

[72] The Court is required to take judicial notice of the signature of a court official such as the Deputy Registrar where it appears on any document exhibited in a matter. In this regard, I accept that the

signature appearing on the Deed of Exchange as that of the Deputy Registrar 'D. James', is hers. I make no finding that she ascertained from Ms. Arrindell that she knew what she was signing.

- [73] I make the observation that the Deputy Registrar Ms. James is not a trained lawyer and has no legal training. This case perhaps serves as an object lesson regarding the expectations of legal practitioners and signatories of legal documents who appear before non-legal court officials to have such documents witnessed. The learned Registrar is invited to take note of the related submissions and their import and be guided accordingly.
- [74] Dr. Bowman pointed out that Ms. Arrindell testified that he said he would buy another house for her and exchange it with her house. He noted further that she acknowledged signing the Deed of Exchange and engaging Mr. Charles to find a place that he could buy in exchange for her house. He submitted that her witness Mr. Verol Soleyn, did not offer a shred of evidence regarding what she understands she was signing when she signed the Deed of Exchange.
- [75] He contended that the legal principles regarding *non est factum* are outlined in **Saunders v Anglia Building Society**⁹, **Halsbury's Laws of England**¹⁰, **Chitty on Contracts**¹¹ and **Sundry Workers v Antigua Commercial Bank Ltd**¹². He relied on pronouncements made by Lords Reid, Wilberforce and Pearson and Viscount Dilhorne in the **Saunders v Anglia case**.
- [76] There, Lord Reid opined:
- 'The plea cannot be available to anyone who was content to sign without taking the trouble to try to find out at least the general effect of the document. Many people do frequently sign documents put before them for signature by their solicitor or other trusted advisers without making any enquiry as to their purpose or effect. **But the essence of the plea non est factum is that the person signing believed that the document he signed had one character or one effect whereas in fact its character or effect was quite different.** He could not have such a belief unless he had taken steps or been given

⁹ [1970] 3 All E.R. 961.

¹⁰ 4th Edn, Vol. 9(1), pages 438-440.

¹¹ 29th Edition (2004) Vol. 1, pages 416-419.

¹² Unreported decision of the Eastern Caribbean Court of Appeal, Case ANULTAP2015/0005.

information which gave him some grounds for his belief. The amount of information he must have and the sufficiency of the particularity of his belief must depend on the circumstances of each case. Further the plea cannot be available to a person whose mistake was really a mistake as to the legal effect of the document, whether that was his own mistake or that of his adviser.’¹³

[77] Similar sentiments were expressed¹⁴ by Lord Hodson, Viscount Dilhorne, Lord Wilberforce and Lord Pearson. Lord Pearson described what the Court must consider when deciding if an impugned document is sufficiently different in character from what a litigant claimed to have signed. He stated:

‘The judgments in the older cases used a variety of expressions to signify the degree or kind of difference that, for the purposes of the plea of non est factum, must be shown to exist between the document as it was and the document as it was believed to be. ... as the judgments of the Court of Appeal have shown, it would produce wrong results if it were applied as a rigid rule for all cases. In my opinion, one has to use a more general phrase, such as "fundamentally different" or "radically different" or "totally different".’¹⁵

[78] The learned authors of **Halsbury’s Laws of England** used similar language to explain the concept of *non est factum*. They wrote:

‘... For the plea to succeed, it is essential to show that there is as regards the transaction a radical or fundamental distinction between what the person seeking to set up the plea actually signed and what he thought he was signing.’¹⁶

[79] In similar fashion, the learned authors of **Chitty on Contracts** explained:

‘...The general rule is that a person is estopped by his or her deed, and ... a party of full age and understanding is normally bound by his signature to a document, whether he reads or understands it or not. If, however, a party has been misled into executing a deed or signing

¹³ At page 963 g-h.

¹⁴ At pages 966 b), 969 c), page 972 b) and 973 e).

¹⁵ At pages 982-983.

¹⁶ Halsbury’s Laws of England 4th Edition (Re-issue), para.687.

a document essentially different from that which he intended to execute or sign, he can plead non est factum in an action against him. The deed or writing is completely void in whosoever hands it may come.’¹²

[80] In **Sundry Workers v Antigua Commercial Bank Ltd**, the Eastern Caribbean Court of Appeal reiterated those principles. Webster J.A. (Ag.) opined:

‘[17] I have already made the point that the burden of establishing a plea of non est factum, including the fact that the signer took care, is on the person who is asking the court to be released from the consequences of signing an important document, ...’; and

‘[22] The other principle that the appellants must satisfy to succeed on a plea of non est factum is that there was a radical or fundamental difference between the document that the Union signed and the document that they thought they were signing. In the words of Viscount Dilhorne in *Saunders v Anglia Building Society* –

“The difference must be such that the document signed is entirely or fundamentally different from that which it was thought to be, so that it was never the signer’s intention to execute the document.”

[81] Dr. Bowman submitted that he recognized that Ms. Arrindell appeared to be suffering from buyer’s remorse and seemed belatedly to have entertained doubts about the wisdom of her decision. He noted in particular her evidence about the ‘water packages’ and her concern about the welfare of the elderly ladies living close to the disputed property at Arnos Vale. He argued that Ms. Arrindell had had a change of heart. He contended that her testimony ‘amounted to a rationalization’ her change of heart; and did not speak to any misunderstanding of the nature of the property exchange agreed between the parties.’

[82] Dr. Bowman contended that Ms. Arrindell was testifying in plain language about her disappointment with the Cane Hall property; that she had experienced remorse at the idea of having to virtually abandon her three elderly neighbours; and that she changed her mind from going through with the agreement she had made with him as set out in the Deed of Exchange. He contended that she was definitely not testifying that she did not understand the nature or effect of the transaction she made with him.

- [83] He maintained that the uncontroverted evidence on both sides is that the parties negotiated and executed a Deed of Exchange in respect of clearly defined properties. He argued that no question arose as to either the nature of the agreed transaction or the respective identities of the properties exchanged pursuant to the agreement. He submitted that there was nothing in the evidence to cast any doubt upon his assertion that when Ms. Arrindell signed the Deed of Exchange she did so in the full knowledge and awareness that the Deed meant that she was handing over her property to him in exchange for the property which he had purchased for her, as agreed.
- [84] Dr. Bowman submitted that Ms. Arrindell has given not a scintilla of evidence and none has been tendered on her behalf, to support the defence of *non est factum*. He submitted that therefore her defence ought to fail.
- [85] Ms. Arrindell made no counter submissions on the issue of *non est factum*. She did not include in her pleadings or in her testimony any averment that she did not understand the documents she admitted signing and specifically the impugned Deed of Exchange No. 256 of 2016. In fact, she identified it as the Deed of Exchange she signed with Mr. Bowman. In her witness statement she described it as 'the third paper I signed concerning exchanging my land ... registered as deed number 256 of 2016'. In answer to questions asked under cross-examination she replied that if she was shown that Deed of Exchange she would be able to recognize it. When a copy was shown to her, she immediately and unhesitatingly accepted that it was the Deed of Exchange that she signed.
- [86] She also admitted that when Mr. Charles was looking for a house for her, it was so that she could exchange her Arnos Vale house for such house. Ms. Arrindell made no representations that she did not understand what the subject matter of the Deed of Exchange concerned or what were her obligations under that agreement.
- [87] Dr. Bowman has correctly rehearsed the legal principles which guide the court in its consideration of whether a plea of *non est factum* has been made out. The party advancing such a plea must establish that when she signed the impugned document, she believed that it had a particular character or effect which in fact it did not; and that it was fundamentally different from what she believed she was signing. Moreover, such a litigant must prove on a balance of probabilities that she took steps to ascertain what the document entailed.

[88] The evidence does not support Ms. Arrindell's assertions that she was ignorant about the character or effect of the Deed of Exchange when she signed it or that it is substantially different from what she thought she was signing. I am satisfied that she was well aware of the purpose and effect of the Deed of Exchange at all relevant times.

[89] Ms. Arrindell has testified that she is not as academically accomplished as Dr. Bowman and I accept that she is not. However, she has provided inadequate testimony on which to make a finding that she was illiterate, mentally impaired or challenged or otherwise intellectually compromised to the extent that she did not know the nature of the transaction she was entering into with Dr. Bowman. I find therefore that the plea of *non est factum* is not available to her.

Unfair Bargain

[90] Ms. Arrindell submitted that the court should set aside the Deed of Exchange for being arrived at in a manner which was unfair to her. She cited in support the cases of **Evans v Llewellyn**¹⁷, **Falcke v Gray**¹⁸ and **Earl of Aylesford v Morris**¹⁹. She contended that the **Evans v Llewellyn** case is authority for the proposition that where a vulnerable contracting party declines to take professional advice and the contracting party in a stronger position does not insist on the former taking such independent professional advice, a court may set aside an agreement as being improvidently obtained. She argued that this is so even in the absence of fraud.

[91] Ms. Arrindell submitted further that a contract that is concluded by parties who are not on equal footing will not be enforced by the court, where the contract price appears to be significantly lower than the market value of the subject matter and where only the party seeking to enforce it is aware of the true value. She advanced the case of **Falcke v Gray** as authority.

[92] She submitted further that the Court in **Earl of Aylesford v Morris** struck a complementary stance when it decided that where the relative position of parties is such as to raise a *prima facie* presumption of unconscionable use of power by one of them against another, (arising from the taking advantage of a weakness) the person claiming the benefit of a transaction bears the burden of proving that it is fair, just and reasonable.

¹⁷ 29 E.R. 1191.

¹⁸ 62 E.R. 250.

¹⁹ (1872-73) L.R. 8 Ch. App. 484.

[93] On this issue, the learned authors of Halsbury's Laws of England discussed fairness as a ground for invalidating a contract. They opined that a contract may be 'stigmatised as unfair in one of two ways':

1. by reason of the unfair manner in which it was brought into existence ("procedural unfairness") as where it was induced by undue influence, or where it came into being through an unconscientious use of the power arising out of the circumstances and conditions of the contracting parties; ...
2. by reason of the fact that the terms of the contract are more unfavourable to one party than to the other ("contractual imbalance")²⁰.

[94] The writers noted that contractual imbalance or inadequacy of consideration is not, by itself a ground for relief in equity, but may be taken into account in deciding whether it amounts to such fraud as to avoid the transaction; or render it so unconscionable as to constitute evidence of fraud. They cautioned however that 'a bargain cannot be unfair and unconscionable, unless one of the parties to it has imposed the objectionable terms in a morally reprehensible manner, for example by taking advantage of the other's weakness or necessity.'

[95] Ms. Arrindell did not plead such unfairness. The authorities establish that the court will not intervene merely because the transaction is unfair or improvident.²¹ Based on the foregoing, it is clear that her reliance on **Falcke v Gray** as a legal basis for vitiating the Deed of Exchange is without merit. I find therefore that there is no proof of unfairness to Ms. Arrindell of the kind alleged.

Unconscionable Bargain

[96] Dr. Bowman submitted that Ms. Arrindell neither specifically pleaded unconscionable bargain as a defence nor enumerated specific particulars, but raised that defence. Nonetheless, he addressed them fulsomely in his submissions. As a type of fraud, an accusation of unconscionable bargain must be specifically pleaded and proved.²² If the pleadings are devoid of such allegations, the party alleging it will not be able to succeed with such a claim. Ms. Arrindell is bound by her pleadings as is every other litigant.

²⁰ Volume 47 para. 30 (2014) Lexis Nexis Edition)

²¹ *Irvani v Irvani* [2001] 1 Lloyd's Rep 412 at 425, CA. See also *Fineland Investments Ltd v Pritchard* [2011] EWHC 113 (Ch).

²² *Derry v Peek* (1889) 14 app. Cas. 337.

[97] An unconscionable bargain in relation to a sale is generally characterized by three main elements. It usually involves a sale of real property:

1. at a substantial undervalue;
2. by a poor and ignorant person to someone more business savvy and affluent; and
3. in circumstances where the seller has not benefited from independent legal advice.²³

The person seeking to be relieved from the obligations created by the contract must plead and establish unconscientious conduct by the stronger party²⁴.

[98] In the case of **O'Neil Creese v Kelvin Joslyn**²⁵, Her Ladyship Justice Gertel Thom accepted that the three elements in the doctrine of unconscionable bargain are:

1. The bargain must be oppressive to the complainant.
2. The complainant must have been suffering from some type of bargain weaknesses.
3. The other party must have acted unconscionably in the sense of knowingly taken advantage of the complainant.

[99] The person relying on such a defence must capture and articulate those requirements in her pleadings. The paragraphs in the defence on which Ms. Arrindell appears to be relying to anchor this complaint are 2 I, II, III, 3, 3a) and b), (c) I, 3 VI and 3d). The relevant portions state respectively:

- I ... He, Mr. Bowman, is a high high big man in the Seventh Days.
- II. Sometime last year, but before Christmas, Mr. Bowman tell the defendant that he would give her plenty "tousan" dollars and another house to live in if she would sign the house to him. She agreed to sign a paper.
- III. The next day Mr. Bowman come for her to go to sign. He had with him Mr. Dannoel Charles. They went to an office where she, the defendant, sign some papers. She was handed some papers, photocopies of which are hereto attached and Marked "EA1".

²³ Halsbury's Laws of England Volume 22 (2012), para. 298 (Lexis Nexis Edition).

²⁴ *Strydom v Vendside Ltd* [2009] EWHC 2130 (QB).

²⁵ SVGHCV2004/243.

3. At all material times, Particularly at the several times the claimant spoke or had physical contact with the Defendant she was not capable of understanding and did not understand the claimant and the witnesses and the exhibits of and on behalf of the Claimant by reason of her mental condition AND this was known by the Claimant.
- (a) The Claimant by his own confession is ... by occupation a “Director of Education for the Caribbean Union Conference of Seventh Day Adventists and is responsible for 52 School and one University”... Of such education and day to day practice, the Claimant is a repository of knowledge and an intelligent professional who must have evaluated the Defendant’s mental capabilities and must have discovered her incapacity to understand a transaction, in which the intelligent Claimant handed the Defendant a photocopied cheque which he must know, is of no value whatsoever.
 - (b) The Claimant knowing the meaning of the word “amendment” procures the signature of the Defendant to an unsigned, undated, legally un -specifiable paper-writing labeled by him as a “substitute” for an invalid paper-writing bearing the signature of the defendant labeled an “Agreement” filed herein ...
 - (c) ... the claimant personally took the defendant to the RBTT Bank of Kingstown and personally:-
 - I. deposited the sum of \$20,000.00 to the account of the defendant...
- VI. ... The Defendant has never received any “cash” “money” or money’s worth from the Claimant of (sic) from any person on his behalf. AND further states that she has never appointed anyone to be her agent or advisor save Mr. Soleyn...
- (d) And further the claimant must have known and by bringing the above mention of meaningful money to the Defendant, she must become confused and not understand any transactions by reason of her mental incapacity.’⁸

[100] Ms. Arrindell’s legal practitioner did not address frontally which of the foregoing paragraphs dealt with the respective elements of unconscionable bargain. It appears to me that among others, the assertion that she did not receive any money and that she must have become confused by reason of her mental capacity invoke the specter of oppressive behavior as an accusation against Dr.

Bowman's. The repeated assertions that she was significantly mentally inferior to Dr. Bowman foreshadowed 'bargain weakness' in relation to her.

- [101] The overall picture painted by the highlighted paragraphs of the defence was that Ms. Arrindell by reason of her alleged mental challenges, was incapable of understanding the nature and effect of the transaction which was concluded with Dr. Bowman; did not understand them and was totally at a loss as to what had transpired. She seemed also to hint at some wrongdoing in respect of the sale price. She referred to \$200,000.00 and \$20,000.00 being sums allegedly mentioned in a cheque and in the amended agreement. She denied receiving money or money's worth from Mr. Bowman or anyone on his behalf. These allegations capture collectively all of the elements of an unconscionable bargain claim. In those circumstances, I am satisfied that unconscionable bargain was specifically pleaded.

Oppressive conduct

- [102] Ms. Arrindell did not indicate in what respect she considered the transaction with Dr. Bowman to be oppressive. She alleged that the value of the house she received in exchange and the sum of \$40,000.00 was less than the value of the disputed property. When the value of the Cane Hall property (\$355,000.00) is added to the \$40,000.00 which Dr. Bowman agreed to pay Ms. Arrindell, it amounts to \$395,000.00. Dr. Bowman averred that he expended a total of approximately \$372,752.00 inclusive of the purchase price and stamp duty. The difference between that figure plus the \$40,000.00 and the ascribed value of \$428,000.00 proposed by Ms. Arrindell is \$15,248.00. No licensed or trained valuator of land appeared as a witness. It might be that the aggregate value of the Cane Hall property plus \$40,000.00 fell short of the value of the Arnos Vale property by that amount. However, even if it did, I do not consider it to be such a huge variance as to qualify as oppressive and unconscientious of Dr. Bowman.

Bargain weakness

- [103] Bargain weakness may manifest itself in several ways including poverty, advanced age, mental or physical infirmity, lack of education and in appropriate cases, lack of assistance. Ms. Arrindell invoked her lack of education, alleging that she did not understand fully the nature of the transaction with Dr. Bowman. Mr. Soleyn described her 'as somewhat not bright'.

[104] Based on my observations of her in the court room on the day of trial, Ms. Arrindell appeared alert and fielded the questions without notable difficulties. At times, she sought clarification but it did not appear to me that she was labouring under any unusual or weighty challenges in understanding what was being communicated to her and what she was being asked. Interestingly, she claimed that she observed 'water pockets' at the Cane Hall property when she visited and was uneasy because of what she learnt while watching a television programme. She did not say why she did not change her mind about the house at that juncture.

[105] It does not go unnoticed that Ms. Arrindell testified that she had looked at other houses before settling on the Cane Hall property. It strikes me that for whatever reason she made deliberate decisions not to choose any of those other homes. Her testimony is that she hired Mr. Charles to help her to identify a house. She had the presence of mind to do that, a reasonable step to take in the premises. According to Dwayne Charles, her repeated encounters with him regarding her earlier intentions to renovate and upgrade the disputed property were conducted by her without assistance from anyone. She did not refute this.

[106] I do not find that her lack of education hampered her in making an informed decision about the house she eventually chose. She produced no medical evidence which might have bolstered such a claim. I find therefore that Ms. Arrindell was labouring under no mental impediment which placed her at a disadvantage in negotiating and concluding the agreement with Dr. Bowman.

Unconscionable conduct

[107] Ms. Arrindell complained that she did not have the benefit of independent legal advice. She did not deny that Mrs. Roxanne Williams read over the agreement and explained it to her. She did not refute that she turned down the opportunity to consult with a lawyer. She accepted that at her invitation Mr. Charles was involved in the selection of the house. The exercise of choosing a suitable place was protracted over several weeks. It was not a spur of the moment, one day endeavour. Ms. Arrindell had ample opportunity to consult with a lawyer or other persons including professionals if she wished to do so. She chose not to.

- [108] Ms. Arrindell contended that although for the most part she can conduct her day to day affairs satisfactorily, the matter which is before the Court is not a routine day to day matter. She argued that it involves her home which is also her most significant asset. She submitted further that she possesses lower than average intelligence while Dr. Bowman is a highly intelligent, highly qualified educator who possesses experience and skills which ought to have alerted him to her lower than normal intellectual capacity. She contended that she is ignorant of business affairs and property values, and during the negotiations received no advice with respect to the law of contract and the law of real property, or with respect to the value of her property.
- [109] She submitted further that neither of her advisors was competent to advise her with respect to the relative values of her property and the Cane Hall property; that neither Dwayne Charles nor Kendall Arrindell has any experience or training in property valuation. She argued that Dr. Bowman obtained advice with respect to the law and the relative values of the properties during the negotiations. Ms. Arrindell contended that Christopher Browne's valuation demonstrated that her property is worth significantly more than what Dr. Bowman purports to have given her in exchange for it; that her property is located in the most valuable part of Arnos Vale, an area which is in the process of transformation from residential to commercial use and is accordingly appreciating in value, while the property which Dr. Bowman gave her in exchange is on a smaller parcel of land.
- [110] She argued that although the house is larger than her own house, it has significant defects including mold on the walls, moisture damage which she described as 'water pockets'; a recurrent problem of burst pipes; absence of a retaining wall to protect it from erosion and flooding from the river behind it; interior floor covered in vinyl tiles which are not durable; steps and porch which have no floor covering; and a rotting kitchen door. She submitted that due to her lower than normal intellectual capacity, she made an improvident bargain with the Claimant, a highly educated, astute person and that in the circumstances, it is appropriate for the Court to refuse an order for specific performance.
- [111] Ideally, each party to a transaction involving sale of land should engage their own legal adviser. It is regrettable that Ms. Arrindell did not seek out legal advice before she signed the impugned

agreement. Does that mean that she can thereby avoid the obligations created by the contract? The legal authorities say no.

[112] The learned authors of **Chitty on Contracts** point out that:

‘a contract will not be set aside merely because the aggrieved party did not have independent advice and the consideration was inadequate. It must also be shown that the other party engaged in unconscionable conduct or on unconscientious use of power. He must have behaved in a morally reprehensible manner ... which affects his conscience.’²⁶

[113] In view of the circumstances under which Ms. Arrindell concluded the agreement with Dr. Bowman, I am not satisfied that he acted in a morally reprehensible way in his dealing with her. Perhaps he could have insisted that she first speak to a lawyer before proceeding with the transaction. I accept that the disputed property could probably have fetched a higher price on the open market. However, I am of the opinion that the transaction was at arms’ length and not brought about by any nefarious or unconscionable conduct by Dr. Bowman. I make no finding that he perpetuated a fraud against Ms. Arrindell as alleged. I therefore conclude that the agreement for the exchange of the respective properties was a legally binding contract.

Issue 2 – Did Eudenia Arrindell breach the contract?

[114] A breach of contract takes place when one party fails to comply with a material obligation he or she undertook to supply under the contract. Ms. Arrindell agreed to vacate the disputed property and move into the Cane Hall property when the Deed of Exchange was executed and registered. She also agreed to collect the further sum of \$20,000.00 as part payment. She has done neither. Her failure is obviously a breach of the agreement. I so find.

Issue 3 - To what remedies, is Dr. Bowman entitled?

[115] The court is empowered to grant such relief in law or equity which arises from the facts. Breach of contract for sale of land attracts an award in damages or an order for specific performance. Dr. Bowman alleges that he has suffered substantially and he seeks specific performance of the

²⁶ Chitty on Contracts, 29th Edn. (2004), pg. 571.

contract, general damages and injunctive relief. The court has a duty to seek to attempt to make Dr. Bowman whole and make orders which are just to the parties²⁷. This case has come to trial in a relatively short period of time. It is also conceivable that the value of both properties have appreciated in the intervening period.

[116] Specific performance is a discretionary remedy which may be ordered by the court for breach of a binding contract for the sale of land. The Court may grant such relief where damages for breach of contract would not adequately compensate aggrieved party for his loss.²⁸ It is generally an alternative to damages. I am of the view that an order for specific performance of the agreement is in order in the case at bar. Having regard to the evidence that the subject property is occupied by some of Ms. Arrindell's children, it seems just to make an order restraining their further use after the effective date of the order to vacate.

[117] It is established law that damages in these circumstances are aimed at putting the aggrieved party in the position he would have been in if the defaulting party had not broken the contract. Dr. Bowman has foreshadowed in his statement of case and witness statement that by reason of the breach he has been severely inconvenienced, and been compromised in terms of fulfilling certain responsibilities.

[118] The learning is that '... damages should not be awarded, unless perhaps nominally,' for a breach of contract which is 'distinct from the consequences of the breach'.²⁹ It has been said that 'The principle that a claimant's damages should extend only to compensation for 'real losses' has been said to be 'a bedrock of our law'³⁰. In **Bunge SA v Nidera BV**³¹ Lord Sumption remarked 'The fundamental principle of the common law of damages is the compensatory principle' also describing it as '... the overriding principle (or "lodestar")'.

²⁷ *Addis v Gramophone Co Ltd* [1909] AC 488 at 494, HL, per Lord Atkinson.

²⁸ *Hall v Warren* (1804) 9 Ves 605.

²⁹ *Farley v Skinner* [2001] UKHL 49 per Lord Clyde.

³⁰ *Rowley v Cerberus Software Ltd* [2001] EWCA Civ 78 per Sedley LJ.

³¹ [2015] UKSC 43.

[119] The purpose therefore of providing relief is to place Dr. Bowman in as close a position as he would have been had the contract been fulfilled. It is not to permit him to obtain a windfall. It seems that he did not have the use of the Cane Hall property and he did not have access to the disputed property in the intervening period. In these exceptional circumstances, an order for specific performance by itself, while quite in order, might not adequately compensate him for his reasonable losses. For this reason, he is granted leave to file an application on or before 3rd June 2019 for assessment of any such damages.

[120] I direct Ms. Eudenia Arrindell to, on or before 31st May 2019 quit and deliver up by noon, vacant possession of the property situated at Arnos Vale and described in the Schedule to Deed of Exchange No. No. 256 of 2016; arrange for her servants and/or agents to do likewise; and deliver the keys to the Registrar of the High Court, who shall hand them over to Dr. Hillary Bowman or his duly authorized agent.

[121] Dr. Hillary Bowman shall deliver to the Registrar of the High Court on or before 30th May 2019, a cashier's cheque or banker's draft in the name of Eudenia Arrindell in the amount of \$20,000.00 with interest at the customary bank rate, covering the period 3rd February 2016 to 29th May 2019; and the Registrar shall deliver the cheque or banker's draft to Eudenia Arrindell or her duly authorized agent on receipt from her of the keys to the Arnos Vale property.

[122] Eudenia Arrindell shall pay to Hillary Bowman damages for breach of contract to be assessed on application to be filed and served on or before 3rd June, 2019. Eudenia Arrindell is restrained from May 31st 2019, whether by herself, her servants or agents from remaining on, trespassing on, or interfering with Hillary Bowman's enjoyment of the property at Arnos Vale described in the Second Schedule to Deed of Exchange No. 256 of 2016. A penal notice in terms of CPR 53.3 (a) is to be endorsed on the order.

COSTS

[123] Costs generally follow the event. Dr. Bowman is entitled to recovered prescribed costs. Ms. Arrindell shall pay him prescribed costs of \$7500.00 pursuant to CPR 65.5 (2) (b).

MISCELLANEOUS

[124] This matter was initiated in February 2016. When it first came on for hearing the defendant was

represented by Mr. Bayliss Frederick of Fredericks Attorneys. The first four hearings were before Justice Brian Cottle. By order dated 8th April 2016 Cottle J. directed 'Matter is to be transferred to Justice Henry's Court.'

[125] On the next hearing date, Mr. Frederick was absent. Ms. Paula David appeared amicus in respect of the defendant's interests. The court was informed that Ms. David was brought into the claim by Cottle J. The court directed that in the absence of a notice of change of legal practitioner in the record 'The defendant and/or legal practitioner Mr. Bayliss Frederick or Ms. Paula David shall make the necessary application to regularize the record in respect of which legal practitioner appears for the defendant.

[126] By Notice of Application³² Ms. Arrindell applied for orders that a) Mr. John Horace Bayliss Frederick has been relieved of his responsibility to act as legal practitioner for the defendant; and b) Ms. Paula David has been appointed to act as legal practitioner for the defendant. The grounds of the application were that: a) On 26th February 2016 Mr. Justice Brian Cottle, in response to a submission by Counsel for the Claimant ordered that Mr. John Horace Bayliss Frederick, having sworn an affidavit which was filed in this matter had become a witness and ought not to act as counsel for the Defendant; b) On 11th March 2016 Mr. Justice Brian Cottle appointed Ms. Paula David Amicus Curiae to act as counsel for the Defendant; and c) The orders of Mr. Justice Brian Cottle dated 26th February, 2016 and 11th March, 2016, not having been reduced to writing, this application is made for the purpose of recording the effect of the orders of 26th February, 2016 and 11th March, 2016.'

[127] That application was not entertained by this court and no formal order was made regarding it. For the sake of good order and completeness, it is ordered that the referenced Notice of Application is dismissed. Ms. David subsequently filed a Notice of Acting³³. She represented Ms. Arrindell on that basis for the rest of the proceedings.

ORDER

[128] It is ordered:

³² Filed on 27th May 2016.

³³ Filed on 7th July 2016.

- (1) Judgment is entered for Hilary Bowman.
- (2) Eudenia Arrindell is directed to, on or before 31st May 2019 by 12.00 noon:
 - (a) quit and deliver up, vacant possession of the property situated at Arnos Vale and described in the Second Schedule to Deed of Exchange No. 256 of 2016;
 - (b) arrange for her servants and/or agents to do likewise; and
 - (c) deliver the keys deliver to the referenced property, to the Registrar of the High Court who shall hand them over to Dr. Hillary Bowman or his duly authorized agent.
- (3) Dr. Hillary Bowman shall deliver to the Registrar of the High Court on or before 30th May 2019, a cashier's cheque or banker's draft in the name of Eudenia Arrindell in the amount of \$20,000.00 with interest at the normal bank rate, covering the period 3rd February 2016 to 29th May 2019; and the Registrar shall deliver the cheque or banker's draft to Eudenia Arrindell or her duly authorized agent on receipt from her of the referenced keys.
- (4) Eudenia Arrindell shall pay to Hillary Bowman damages for breach of contract, to be assessed on application to be filed and served on or before 3rd June, 2019.
- (5) Eudenia Arrindell is restrained from May 31st 2019, whether by herself, her servants or agents from remaining on, trespassing on, or interfering with Hillary Bowman's enjoyment of the property at Arnos Vale described in the Second Schedule to Deed of Exchange No. 256 of 2016.
- (6) Eudenia Arrindell shall pay to Hillary Bowman prescribed costs of \$7500.00 pursuant to CPR 65.5 (2) (b).
- (7) A penal notice in terms of CPR 53.3 (a) is to be endorsed on this order in respect of compliance with sub-paragraphs (2), (3) and (5) of this order.

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

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar