

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2012/0224

BETWEEN

MERLENE OLLIVIERRE

CLAIMANT

AND

BRIAN WILLIAMS

DEFENDANT

Appearances:

Mr. Ronald Marks and Mrs. Patricia Marks-Minors for the defendant.

Mr. Sten Sargeant for the claimant.

2017: Jan. 31
Apr. 12

JUDGMENT

BACKGROUND

- [1] **Henry, J.:** Ms. Merlene Ollivierre and Mr. Brian Williams had an agreement whereby he undertook to sell her a parcel of land at La Pompe, Bequia for \$27,000.00. Ms. Ollivierre claimed that she paid Mr. Williams part of the purchase price and went into occupation with his consent. She alleged that Mr. Williams failed to execute the conveyance to her as agreed and she therefore refused to pay him the balance of the purchase price. Ms. Ollivierre seeks special damages of \$5,500.00, restitutionary damages or damages for unjust enrichment in the sum of \$21,000.00 with interest and costs.

- [2] Mr. Williams acknowledged the existence of the agreement for sale of the land. He contended that Ms. Ollivierre paid him \$21,000.00 but went into occupation without his permission and without paying him the balance. He complained that Ms. Ollivierre took a tractor and dug a hole on the subject land and an adjoining lot. He claimed that the land was thereby damaged to the tune of \$40,000.00. He made an ancillary claim for specific performance of the contract or alternatively rescission; a declaration that he is entitled to a lien on the down payment; general damages; damages for trespass or alternatively reinstatement in the amount of \$40,000.00 and costs. I have concluded that Mr. Williams breached the contract.

ISSUES

- [3] The issues are:
1. Did either party commit a breach of contract?
 2. To what remedy is Ms. Ollivierre or Mr. Williams entitled?

ANALYSIS

Issue 1 - Did either party commit a breach of contract?

- [4] Mr. Brian Williams owns the parcel of land at Lower Derrick/La Pompe, Bequia, which is the subject of this claim. It is registered by Deed of Conveyance 1385 of 1999. In 2004, he agreed to sell it to Ms. Ollivierre for \$27,000.00. Ms. Ollivierre insisted that the agreement was finalized in March while Mr. Williams maintained that it was in July.
- [5] Ms. Ollivierre paid Mr. Williams \$21,000.00 by 4 installments of \$5,000.00, \$14,000.00, \$1000.00 and \$1,000.00 respectively. She went into occupation of the property in October of that year. Mr. Williams asserted that it was the following year. I accept Ms. Ollivierre's version which was corroborated by her daughter Nisa Ollivierre and her boyfriend Oswald Nichols, whose testimony was not impeached during cross-examination.
- [6] Ms. Ollivierre arranged for a tractor to go onto the property to dig the foundation for her dwelling which she intended to construct there. While this was being done, Mr. Williams visited the site. Ms. Ollivierre and her witnesses testified that Mr. Williams 'pulled a line' to demonstrate where the boundaries were

and was very involved in what was taking place. Nisa Ollivierre said that he was ensuring that everything was well as it relates to the boundaries.

- [7] In his witness statement signed and filed on 6th April 2016, Mr. Williams claimed that he went to the land that day and asked the tractor driver who gave him permission to interfere with his land to which he replied that Merlene sent him. He said that he made no fuss because he was of the view that Ms. Ollivierre was ready to pay him the balance of purchase price. At trial, he denied 'running the line' as alleged by Ms. Ollivierre. He was adamant that he did not give permission for such excavation works and that he instructed Ms. Ollivierre to stop the excavation works because he saw that they were damaging his land before the balance of the purchase price had 'passed'. The divergence in his written and oral account is striking and irreconcilable.
- [8] Ms. Ollivierre and her witnesses denied that Mr. Williams gave any such instructions. In fact, they maintained that he assisted them with pulling the line to mark the boundaries to the land. Mr. Williams struck me as a very 'dodgy' witness. His demeanour and attitude was testy and not forthcoming. He did not impress as a witness of truth. At one point, he was encouraged to speak up and he responded that he could speak no louder, however during cross-examination he raised his voice on more than one occasion thereby demonstrating that he was less than truthful when he claimed that he could speak no louder. Where his account differs from the other witnesses, theirs is preferred.
- [9] Their testimony is more credible and I believe them. I therefore accept Ms. Ollivierre's testimony that she had his consent to go onto the land and carry out the excavation works. I find that he did not put a stop to the excavation as he claimed but rather assisted Ms. Ollivierre and her companions to identify the boundaries by 'pulling the line'.
- [10] Ms. Ollivierre has not paid Mr. Williams the balance of the purchase price. Mr. Williams did not execute the conveyance to her. Ms. Ollivierre pleaded that they agreed that after her initial deposit of \$5,000.00 she would make a further substantial payment after which Mr. Williams would execute a deed of conveyance in her favour forthwith. She claimed that they agreed that thereafter she would make periodical payments until the full contractual amount had been paid. In her Defence to counterclaim she asserted that Mr. Williams orally agreed to execute the deed in her favour after she had paid \$21,000.00.

[11] She testified that she made an initial deposit of \$14,000.00, followed by payment of \$5,000.00, and \$1,000.00. She stated that her agreement with Mr. Williams was that he would execute the deed after she had paid half of the purchase price. She testified that she made further payments after she had paid half because that was how they lived. She alleged that after making the \$21,000.00 payment she requested of Mr. Williams that they conclude the transaction by executing the deed so that she could complete payment. She said that she was ready to commence construction and repeated her request unsuccessfully, several times between 2006 and 2011. She explained that she became worried because she became aware that Mr. Williams had encountered problems with other persons regarding lands. She consequently caused her solicitors to write to Mr. Williams seeking a refund of the monies she had paid to him.

[12] She became concerned that he did not have clear title to conclude the sale because of what she considered to be his reluctance to do so. She produced a letter dated 11th March, 2011 which she alleged to be the referenced letter. It mentioned an agreement for the sale of two parcels of land. Ms. Ollivierre acknowledged that the reference to two parcels was erroneous since the agreement related to one parcel. She averred that her several attempts to amicably resolve the dispute with Mr. Williams have failed.

[13] Mr. Williams pleaded that the agreement with Ms. Ollivierre was orally negotiated and consisted of several express and implied terms. In this regard, he claimed that they expressly agreed the contract price; and implicitly agreed:

1. to waive the need for a contract in writing with the normal 10% deposit;
2. that Ms. Ollivierre would pay the balance within 90 days as is the usual practice had the agreement been evidence in writing;
3. to a condition precedent that the contract price would be paid in full before he would execute a deed of conveyance.

[14] Mr. Williams testified that Ms. Ollivierre paid him a deposit of \$14,000.00, a further \$5000.00 and two separate payments of \$1,000.00 each subsequently. He contended that he acted in good faith and trusted that Ms. Ollivierre would pay him the balance of the purchase price within a reasonable time. He insisted that the only term expressly agreed was the purchase price. He referenced

previous sales of land that he was party to and said that he never received deeds without first paying the full purchase price and vice versa. He claimed that in those instances, the transactions were done through a lawyer. He insisted that he would have never agreed to give Ms. Ollivierre a deed without receiving the full purchase price.

- [15] He explained that Ms. Ollivierre came to see him about two weeks after excavating the lands and asked him to sign over the deed to her because she wants to go to RBTT Bank in Bequia to get money to go to Trinidad to buy a pirogue (fishing boat) and she will give him \$3000.00 from the proceeds of that loan. He remarked that he thought to himself that something is wrong and he could do no such thing because she still owed him \$6,000.00.
- [16] He indicated that from 2005 he heard nothing further from Ms. Ollivierre and although she had ample time to pay him she did nothing. He denied that she asked him to execute the deed and he received no notice from her lawyers asking him to come to their office to execute a deed nor did she personally bring one to him for execution.
- [17] Mr. Williams testified that the land was left in a state where it was open to the rain to wash away and that Ms. Ollivierre neither attempted to refill the dirt or to pay him the rest of the purchase price. He acknowledged receiving the letter from Ms. Ollivierre's lawyers and expressed surprise that it referred to the sale of two parcels of land. He thought it was a joke. Ms. Ollivierre's concession that it was a mistake is accepted. The court takes into account that the same error appeared in her original claim form but not in the amended claim form which is the one under consideration. It is noteworthy that the amended claim form was filed after Mr. Williams had filed his defence and adverted to one parcel of land. I infer that Ms. Ollivierre then realized her error and took steps to correct it.
- [18] He refuted Ms. Ollivierre's claim that he had been unjustly enriched. He asserted that if Ms. Ollivierre had not damaged his land he would have given her back the money but he cannot do so because the damage to the land is more than she paid to him and he needs to remedy it to put it back for sale. He denied liability for the excavation expenses she incurred. He explained that after Ms. Ollivierre brought this claim his wife told him, 'she step hard on you, you step a little harder.'

[19] The parties' accounts were different in two material respects. In the first case, Mr. Williams alleged that all of the money was paid before the excavation took place while Ms. Ollivierre maintained that she paid him \$2000.00 after. In my opinion, apart from the matter of credibility, the payments were not refuted. In the second case, Mr. Williams has introduced implied terms into the contract while Ms. Ollivierre claimed that there were none.

[20] Ms. Ollivierre submitted that the entire case turns upon issues of fact and the credibility of witnesses. She contended that the evidence at trial demonstrates that Mr. Williams induced her to enter into the contract for his own benefit and to her disadvantage knowing that he could not transfer title to her without the mortgagee's permission.

[21] She argued that an oral contract is enforceable where there has been a sufficient act of part performance by the person seeking to enforce it. She cited the text **Commonwealth Caribbean Property Law**¹ in support of this proposition. She contended that having paid \$21,000.00 towards the purchase price she had paid a substantial portion of it. She urged the court to consider the learning found in the referenced text on the issue of open contracts. In this regard, she cited the following passage:

"open contracts" are ... contracts which may be deemed to provide expressly for nothing beyond the identity of the parties, the definition of the subject matter and the price to be paid. It is stated that in the Trinidadian case of *Chaital v Ramal* (2003) 62 WIR 449, it was explained that the position in English Law with regard to an open contract for unregistered land which does not specify a date for completion or the performance of any other obligation, was that the contract must be construed as containing implied terms: (a) that the vendor had a good and marketable title to the land; (b) that the vendor would deliver an abstract of title to the purchaser within a reasonable time from the date of the contract; and (c) that both vendor and purchaser would proceed to completion within a reasonable time of the contract date. However, it would not be until the vendor had delivered and

¹ 2nd Ed. by Gilbert Kodilinye

abstract of title that the purchaser would come under an obligation to complete.²
(underlining mine)

[22] Mr. Williams contended that the Court must resolve the issue of when the deed was to be executed by looking at Ms. Ollivierre's pleaded case. He pointed out that she pleads at para. 3 (c) and (d) of her Amended Statement of Claim that the agreement was that as soon as the \$5,000.00 was paid, he was to execute a Deed to her forthwith. He pointed out that she pleaded at paragraph 7 of her Reply:

"7. As to paragraph 10 of the Defence, **the Claimant avers that it was orally agreed that after the payment of twenty one thousand dollars (\$21,000) the Defendant will execute a Deed in the Claimant's favour.....**" (bold added)

He concluded that contradictory as her pleadings are, in her witness statement Ms. Ollivierre offers no evidence in this regard. He opined that the Court should hold a lurking doubt that this term was ever agreed.

[23] Mr. Williams argued that when the agreement was made only he and the Claimant were present. He submitted that none of her other witnesses gave any evidence about the terms agreed. He contended that the Court should find that the only real express term of the agreement is the contract price of \$27,000.00 and that there was neither a structure nor timeline as to the installments.

[24] Mr. Williams submitted that the court can resolve the discrepancy in testimony by reference to the guidance of Satrohan Singh JA in **Garnet L. Didier v Geest Industries (W.I.) Ltd**³, an employment law case, that dealt with the point of law of implying terms into a contract by custom. Singh JA observed:

'It is a question of law, whether on the facts adduced in evidence, that a true inference can be drawn for the inclusion of a term into a contract [**OBRIEN v ASSOCIATED FIRE ALARMS LTD [1991] 1 ALL ER. 93**]. A term can be implied by the conduct of the parties demonstrating that they did agree upon a certain point even though they did not state. [**WILSON v. MAYNARD SHIPBUILDING CONSULTANTS AB [1978] 2 All ER 78**] It may be implied if is something so obvious that the parties must have intended it, and this, the

² Ibid. at page 277 of Commonwealth Caribbean Property Law.

³ Dominica High Court Civil Appeal No. 6 of 1999, delivered October 25, 1999.

"officious bystander " test, it is necessary to show that the exasperated cry of "oh. Of course" would have come from both parties⁴ [SHIRLAW v SOUTHERN FOUNDRIES (1926) LTD [1939] 2 ALL E.R. 113] It may be implied by custom in which case the parties must be taken to have agreed on the obvious; the custom must therefore found to be "reasonable, notorious and certain". Finally, a term may be implied if it is found to be necessary for the contract to work properly. It must be "founded and presumed intention and upon reason [THE MOORCOCK [1989] 14 PD 64] It must be 'necessary in the business sense to give efficacy to the contract" [ROUSE v MENDOZA [1967] 12 WIR 1]"

[25] Mr. Williams also adverted to dicta by Lord Hoffman in **Attorney General of Belize v Belize Telecom Ltd**⁵ where he revisited the common law test of implication of terms into contracts. He observed:

[26] In *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977) 180 CLR 266 at 282-283 Lord Simon of Glaisdale, giving the advice of the majority of the Board, said that it was "notnecessary to review exhaustively the authorities on the implication of a term in a contract" but that the following conditions ("which may overlap") must be satisfied:

(1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that "it goes without saying" (4) it must be capable of clear expression; (5) it must not contradict an express term of the contract.'

[26] Mr. Williams contended further 'in applying the law to the facts, it ought to be inconceivable to this Court based on the evidence before it, that as someone who obviously has previous experience in buying and selling land he will not enter into a contract with Ms. Ollivierre to sign over a deed to her without the full contract price being paid.' He submitted 'if the Court were to apply the "officious bystander" test the obvious answer will be "yes! It must be a term that the purchase price must be paid

⁴ Emphasis mine.

⁵ [2009] UKPC 10, (2009) 74 WIR 203.

in full before a deed is signed”. He concluded that the contract is simply unworkable without this court holding that such a term was implicit in the agreement.’

- [27] Mr. Williams argued ‘apart from the common law test, the drafting of Deeds recites clauses based on the land law of England & Wales before 1st January 1926’ and that ‘the usual recital in every deed of conveyance registered in this State contains the following clause:

“**NOW THIS INDENTURE WITNESSETH** that in pursuance of the said hereditaments and in consideration of the sum of X THOUSAND DOLLARS (\$XX,000.00) by the PURCHASER paid to the VENDOR (the receipt whereof the VENDOR doth hereby acknowledge) the VENDOR doth hereby Grant and Convey.....’

- [28] He submitted ‘it is customary conveyancing practice that the Vendor’s signature and the Purchaser’s payment are concurrent conditions of any land sale under the Unregistered System of land transfer which obtains in Saint Vincent and the Grenadines. The Deed itself is the receipt that the money was paid as well as being the paper title.’

- [29] The law relating to implied terms has been carefully outlined by Mr. Williams as articulated in the case of **Attorney General of Belize v Belize Telecom Ltd**¹⁰. It is clear that the parties opted for an oral contract, but I make no inference that there was an implied agreement to waive the 10% deposit. While that requirement might be usual in written contracts drafted by legal practitioners, it has not been established that such a term is a feature in oral agreements between lay people. For the same reason, I make no finding that Mr. Williams and Ms. Ollivierre agreed to payment of the balance of the purchase price within 90 days, or that payment of the full purchase price was a condition precedent to execution of a deed.

- [30] I find that the parties had a contract for the sale and purchase of the subject land. I hold that the two express terms regarding payment was that the purchase price was \$27,000.00 and that Mr. Williams would execute the deed in Ms. Ollivierre’s favour after she had paid half of the purchase price. She repeated said this in her evidence. Her statement of claim referred to execution of the deed ‘forthwith’ after payment of the deposit of \$5000.00 and a further substantial payment of an unspecified amount.

[31] In her Defence to Counterclaim, Ms. Ollivierre referred to an oral agreement by which Mr. Williams allegedly undertook to execute the deed in her favour after payment of \$21,000.00. This statement was in response to Mr. Williams' defence in which he pleaded that he made repeated requests for her to pay the balance of \$6,000.00 and that she refused to do. Her response was that he agreed to execute the deed in her favour after she paid that money. It seems to me that this does not contradict her assertion that Mr. Williams had agreed to execute the deed after she had paid half. She was only responding to his assertion that she refused to pay the balance. Her answer was that he had promised after she had paid the \$21,000.00.

[32] This fits within the context of the chronology of events she outlined in her claim form and witness statement. Her reply can either be interpreted as referring to a later oral understanding or agreement which would have replaced the earlier contract or it can be accepted for what I think it is, a response to Mr. Williams' assertion that he made requests for payment of the balance.

[33] Ms. Ollivierre's assertions in her pleading that they had an agreement for execution of the deed, after she had made that substantial payment, is not irreconcilable with her testimony that the oral agreement provided for execution after half was paid. I accept her testimony and find that they expressly agreed that the execution of the deed would take place after she had paid one half of the purchase price which was effectively achieved even before the payments totaled \$21,000.00. I do not think that it is necessary to make a finding about the order date of the installment payments, to decide that Mr. Williams breached the contract and when. Suffice it to say that by the time Ms. Ollivierre had made the second payment of \$1000.00, (making an aggregate of \$21,000.00) she had completed her end of the bargain whereas Mr. Williams had not fulfilled his.

[34] For those reasons, I accept Ms. Ollivierre testimony and find that the parties agreed that Mr. Williams would execute the deed after she had paid \$21,000.00 towards the purchase price. This agreement is not inconsistent with the requirement that the final payment be made before the deed was delivered to Ms. Ollivierre. The law stipulates that for a deed to have legal force it must be registered.⁶ Mr. Williams would not have deprived himself of any interest, right or title in the subject property by

⁶ Registrations of documents Act, Cap. 132, section 5 (2).

executing the deed before receiving the final payment. He could have done so and simply showed the executed deed to Ms. Ollivierre to activate the final payment. By failing to do so he breached the oral agreement. I reject his assertion that the agreement was for Ms. Ollivierre to pay him the full purchase price before he executed the deed. His ancillary claim for breach of contract is dismissed. Judgment is entered for Ms. Ollivierre.

[35] Ms. Ollivierre presented evidence late in the day alleging that Mr. Williams did not have clear title when he entered into the contract to sell her the land. Mr. Williams was cross-examined about a mortgage on the land and the date of release. Ms. Ollivierre did not file a certified copy of the Release as required by law. That aspect of her case is therefore not considered.

Issue 2 - To what remedy is Ms. Ollivierre or Mr. Williams entitled?

[36] Ms. Ollivierre pointed out that she has been without the benefit of her money for several years, has incurred expenses to dig her foundation and retain a lawyer. She requested that the court order Mr. Williams to repay her the sums she advanced on the sale of the property and to reimburse the funds she expended on digging the foundation.

[37] She argued that she incurred the cost of digging the foundation based on her reliance on promises and assurances made by Mr. Williams and his expressed authority to enter the land. She submitted that once he decided not to uphold the agreement he is not entitled to retain her money.

[38] Mr. Williams contended that the Court is best guided by the case of **Thomas Mowry v David Payne, Woodsville Development Corporation Ltd, & Hogarth Sergeant**⁷ where D'Auvergne J.A. [Ag] similarly explored on appeal whether the Claimant was entitled to rescind a contract for the sale of a Condominium. He submitted that that case and **Halsbury's Laws of England**⁸ are authorities for the proposition that 'a contract may be avoided on the ground of misrepresentation, fraud or mistake and also non-disclosure.' He submitted that in the instant case, there is no allegation of fraud, mistake or non-disclosure and no evidence of misrepresentation or defect of his title. He submitted that based on

⁷ Montserrat High Court Civil Appeal No. 2 of 2000,

⁸ 4th Edition Volume 42 paragraphs 47 and 50.

the law and facts, Ms. Ollivierre has no right to rescind the contract and even if the Court finds that she had such a right, she would still have lost it by waiting 5 years to bring the claim.

[39] Mr. Williams pointed out that D'Auvergne J.A. recognized in the **Thomas Mowry** case⁷ that there are some situations where in which a Court acting in its equitable jurisdiction is not bound to decree specific performance in every case in which it will not set aside a contract for rescission. He submitted that this is such a case where the Court should not order specific performance. He most liklet meant 'should order specific performance'. He reasoned that the reason for this is clear: Ms. Ollivierre has evidently wished, 'as Lord Blackburn opined, to "throw back" the damaged land' on him and say she wants back her money. He contended that this is a clear case where *restitutio in integrum* is impossible and the Court cannot put both parties in the same position as if the contract was never made. He submitted that in the circumstances Ms. Ollivierre must pay him for the damage to his land. Having regard to my finding on responsibility for breach of the contract, that option is ill-advised.

[40] It seems to me that awarding Ms. Ollivierre restitutionary damages or damages for unjust enrichment as prayed would not adequately meet the justice of this case. I am cognizant that generally the value of land appreciates. Ms. Ollivierre has paid a substantial part of the agreed purchase price and has been ready to make the final payment of \$6000.00 for approximately 13 years. She has also expended monies and effort on preparing the land to build. Mr. Williams has remained the owner of the subject property and is in a position to conclude the agreement by transferring title. His submissions regarding restitution and *restitution in integrum* while sound in law will not be applied in the case at bar.

[41] The court is authorized to grant such relief in law or equity which arises from the facts and which resolves all of the issues.⁹ In deciding what order to make, the court is required to make orders which are just to the parties. The resolution of the instant case must attempt to give both parties justice and at the same time attempt to make Ms. Ollivierre relatively whole. In my considered opinion, the justice of the case would best be served by an order for specific performance.

⁹ Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act Cap. 24, sections 19 and 20.

[42] Mr. Williams is accordingly ordered to execute the deed of conveyance to Ms. Merlene Ollivierre and deliver it to her legal practitioner's office on or before 28th April, 2017 by 3.00pm. Ms. Ollivierre is to pay into her legal practitioner's office on or before 27th April, 2017 by 3.00pm, the balance of the purchase price in the amount of \$6000.00, by certified cheque or banker's draft payable to Brian Williams. On receipt of the executed deed of conveyance, Mr. Ronald Marks or Mrs. Patricia Marks-Minors or their agent is to deliver to Mr. Brian Williams' legal practitioner, Mr. Sten Sargeant, on or before 3rd May, 2017, the cheque or banker's draft for delivery to Mr. Williams.

COSTS

[43] Mr. Williams submitted that costs follow the events and that prescribed costs will apply in accordance with Part 65 of CPR 2000 (as amended). He submitted further that if damages are to be assessed, then cost as well may be assessed if not agreed on a finding for the quantum of damages. He is correct. Ms. Ollivierre is entitled to costs on the prescribed scale. Mr. Williams shall pay prescribed costs of \$7500.00 to Ms. Ollivierre on or before 28th April, 2017 pursuant to CPR 65.5 (2) (a).

A penal notice in accordance with CPR 533(b) is to be attached to this judgment.

ORDER

[44] It is ordered:

1. Mr. Williams is directed to:
 - (a) execute a Deed of Conveyance transferring the subject property located at La Pompe Bequia and registered by Deed of Conveyance No. 1385 of 1999, to Ms. Merlene Ollivierre; and
 - (b) deliver it to her legal practitioner's office on or before 28th April, 2017 by 3.00pm.
2. On or before 27th April, 2017 by 3.00pm, Ms. Ollivierre is to pay into her legal practitioner's office, (i.e. the law chambers of Mr. Ronald Marks and Mrs. Patricia Marks-Minors) the balance of the purchase price in the amount of \$6000.00, by certified cheque or banker's draft payable to Brian Williams.

3. On receipt of the executed deed of conveyance, Mr. Ronald Marks or Mrs. Patricia Marks-Minors or their servant or agent is to deliver to Mr. Brian Williams' legal practitioner, Mr. Sten Sargeant, on or before 3rd May, 2017, the cheque or banker's draft for delivery to Mr. Williams.
4. Mr. Williams shall pay prescribed costs of \$7500.00 to Ms. Ollivierre on or before 28th April, 2017 pursuant to CPR 65.5 (2) (a).
5. A penal notice in accordance with CPR 53.3(b) is to be attached to this order.

[45] I am grateful to counsel for their written submissions.

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Esco L. Henry
HIGH COURT JUDGE