

SAINT LUCIA



IN THE HIGH COURT OF JUSTICE

(CIVIL)

A. D. 1996

Suit No. 481 of 1991

Between:

SPIRICOR OF ST. LUCIA LTD

- Plaintiff

and

1. THE ATTORNEY GENERAL OF ST. LUCIA
Sued as representing the Crown under Section
13(2) of the Crown Proceedings Ordinance
Chapter 13

2. Hess Oil St. Lucia Ltd

- Defendants

Mr. D. Theodore for Plaintiff

Mr. P. Husbands Q.C. for Defendant No. 1

Mr. M. Gordon for Defendant No. 2

1993:	December	6
1995:	March	7
	December	18, 19, & 20
1996:	April	30

JUDGMENT

d'Auvergne J

On November 29th, 1991 the Plaintiff filed a writ of Summons indorsed with Statement of Claim asking for damages in excess of eighty six million dollars against the Defendants.

The Statement of Claim is quite lengthy and the Plaintiff asks for several declarations and claims for breach of warranty against both defendants, general and exemplary damages and costs.

The Suit arises because the Plaintiff alleges that the first

ST. LUCIA
H I C I A

Defendant sold and conveyed to the Plaintiff a portion of land at Cul de Sac on the 20th July, 1987 for the price of \$1,130,000.00 United States Currency and the Plaintiff paid the sum of \$250,000.00 United States Currency on the execution of the Deed, the balance being secured by a Vendor's privilege to be paid within five years. The Plaintiff alleged that it entered into possession of the land and continued in possession until it was evicted by the second Defendant on or about February 9th, 1990 occasioned by an agreement executed on February 1st, 1990 between the first and second Defendants by which the first Defendant agreed to sell the same portion of land to the second Defendant for \$3,375,000.00 Eastern Caribbean Currency.

The Plaintiff alleged that by reason of the eviction it is entitled to delay the payment of the balance of the price to the first Defendant.

The Plaintiff seeks a declaration among others that it is the owner of the land in question and is entitled to possession.

The first Defendant entered appearance on December 2nd, 1991 and the second defendant entered appearance on December 6, 1991.

The first Defendant filed its defence on February 3rd, 1992. In its defence the Defendant denied the Sale to the Plaintiff, (only admitted to the particulars of Cul de Sac Distillery) on the one hand but states later in the defence that all the terms of the alleged sale were not contained in one document signed by the parties but there was a memorandum of understanding dated September 11, 1986 whereby the Plaintiff agreed to refurbish the Cul de Sac Distillery, manufacture and market alcohol and beverage alcohol products.

I pause here to note that, that memorandum of understanding was never put in evidence.

The first Defendant admitted that on July 20th, 1987 it executed

the Deed of Sale of the distillery for the project but it was an implied condition of the said Deed of Sale and conveyance that the Plaintiff had an Alien's Landholding Licence to purchase and hold the distillery.

The first Defendant states that on July 1st, 1987 it granted the Plaintiff an Alien's Landholding Licence and it was a condition of the licence that the Plaintiff pays the stamp duty assessed thereon.

The first Defendant stated that on the above premises the Plaintiff did not at any time have an Alien's Landholding Licence to purchase and hold the land for the purposes of the project and on the above premises the first Defendant did not sell and convey the land to the Plaintiff.

In the alternative the first Defendant alleges that it rightly rescinded the agreement for sale and conveyance of the Distillery for the project. Further that Defendant alleged that the Plaintiff breached the conditions contained in the memorandum of understanding by failure to perform its part therein as it relates to the project.

The rest of the defence contains certain non admissions and denials of the Plaintiff's statement of claim.

On a Counter Claim the first Defendant claims damages for rescission of the agreement by the Plaintiff and repayment of a sum of \$212,015.43 for money it paid to secure the Distillery as the Plaintiff failed to supervise, maintain or utilize the said distillery.

The second Defendant filed its defence on January 14th, 1992. In that defence it alleged that it had no knowledge of the first (10) ten paragraphs of the Plaintiff's Statement of Claim save paragraph

three (3) which it admitted. Paragraph three (3) simply stated that the Cul de Sac Distillery was shown on the Land Register map as parcel numbers 0645B 3, 0645B 7, 0645B 8 and 0645B 9.

The second Defendant agreed that by the agreement dated February 1st, 1990 it agreed to purchase the land from the first Defendant and it denied that the sale was wrongful and that it had knowledge of any interest in the land by the Plaintiff or that the Plaintiff had any interest in the said lands.

It denied that it wrongfully evicted the Plaintiff and it admitted that it was in possession of the said land.

It alleged that it would rely on Section 38 of the Land Registration Act 1984 at the trial.

In its reply to the defence of the first Defendant filed on March 23rd, 1992 the Plaintiff alleged that the memorandum of understanding does not constitute a binding agreement between the parties as it was subject to the execution of a final Incentive Agreement and a final sale agreement between the parties.

The Plaintiff admitted that no final incentive agreement had been executed by the parties but the Deed of Sale is the only final sale agreement.

The Plaintiff alleged that it paid the stamp duty on the Alien's Landholding Licence on the 26th of July, 1987 and remitted a bank draft to the Accountant General's account for that purpose.

The reply is also an extremely long document which does not add anything further to the pleadings.

On March 24th, 1992 the Plaintiff joined issue with the second Defendant on its defence save in so far as the same consisted of

admissions.

At the trial the Plaintiff called Lisle Chase, Secretary of the Plaintiff Company, and Norman Francis, Co-operate Secretary and Legal Officer of the National Commercial Bank as its only witnesses.

The first Defendant called Richard Gomez, Manager Secretary of Barclays Bank Corporation; Andriana Henry, Acting Assistant Accountant General and Robert Innocent as its witnesses.

The second Defendant called only Barbara Pierre, a solicitor to produce four registers.

In this case it seems as though the documents tendered will play an even more important role than the Viva Voce evidence. The nature of the evidence of Lisle Chase was to produce several documents and Robert Innocent, a junior Crown Counsel, was called only to produce documents. I shall review the oral evidence and refer to the documentary evidence as I find it necessary to do so.

Besides tendering documents Lisle Chase stated that he had served as Secretary of the Plaintiff Company since its incorporation in March of 1987. He sought to produce the Deed of Sale and objection was taken by Learned Counsel for the Defendants. Lengthy arguments ensued and the Court ordered the Plaintiff to pay stamp duty on the document not later than December 31st, 1993 and the matter was adjourned for that purpose.

When the case resumed Chase continued and put into evidence several other exhibits.

When he was Cross Examined by Mr. Husbands, Chase admitted that he had recently filed a Suit against the Plaintiff Company for services he rendered to them and that he obtained judgment in the

sum of \$5,000.00.

He said that he honestly did not know if the Company had any money to pay him since he had never seen the statements of the Company. He said that he had made several requests for payment since 1987.

He said that after some delay he eventually paid the four watchmen to the property who came to his office for payment, but that was when he got the money from Mr. La Traverse, the Chairman and Managing Director of the Plaintiff Company. He said that he was aware that the Government had made payments but he was only now seeing the documents to that effect.

He said that he was not aware that there had been a subsequent payment by Spiricor (the Plaintiff Company) to the Government. He referred to a letter by Mr. Vernon Cooper Q. C. to Mr. La Traverse, the subject matter of which was that Mr. La Traverse had tendered many dishonoured cheques in St. Lucia and the Manager of Barclays Bank had come to him on that matter.

He was then Cross Examined by Mr. Gordon. He said that he did not know why stamp duty on the deed of Sale was not paid for seven years. He said that it would be fair to say that the watchmen came to his office on more than one occasion but he was unable to pay because he was not put in funds by the Plaintiff Company.

He agreed that the Plaintiff had entered into possession of the distillery, but he had no idea whether the Plaintiff Company was still in possession as of February 1990.

He said that his fees had not been paid by the Plaintiff Company.

The National Commercial Bank was subpoenaed to attend Court to produce two Barclays Bank drafts which were deposited at the National Commercial Bank. Norman Francis Cooperate Secretary and

Legal Officer, attended court on behalf of the bank.

He stated that on June 29th, 1987 a cheque in the amount of \$228,825.00 was deposited in the account in the name of the Accountant General. He said that he could not say whether that cheque was dishonoured or not.

He further stated that a cheque for United States Currency \$250,00.00 was converted into Eastern Caribbean Currency to an amount of \$672,050.00. He said that his records indicate that on July 10th, 1987 that amount was deposited into Account 10981121 in the name of the Accountant General and that cheque was honoured.

Richard Gomez stated that on January 21st, 1988 as Assistant Manager of Barclays Bank he signed a letter referring to an amount of \$228,825.00.

He said when the draft was presented for payment it was dishonoured. Under Cross Examination he said that he asked for the amount to be refunded and it was so refunded.

Andriana Henry identified a document which she called an account which showed an amount outstanding to the Government from the Plaintiff in the amount of \$212,015.43.

The last witness for the first defendant was Robert Innocent who produced (19) nineteen documents and as stated earlier Barbara Pierre tendered the registers pertaining to the various parcels of land on behalf of the second defendant.

ARGUMENTS

Mr. Gordon, Learned Counsel for the second Defendant, argued that the Plaintiff's Claim against the second Defendant falls under four heads, namely:

- (1) A declaration that the Agreement dated 1st

February 1990 between first Defendant and the second Defendant hereinafter referred to as **The Agreement** is null pursuant to Paragraphs 11(2) and 12(2) of the Statement of Claim.

- (2) A declaration that the Plaintiff is the owner and entitled to The Cul de Sac Distillery as stated by paragraph eight (8) of its Statement of Claim or alternatively restoration of the Cul de Sac Distillery and damages.
- (3) Damages for conspiracy between the first and second defendants to injure the Plaintiff by the first defendant committing a breach of contract which contract as alleged is contained in the Deed of Sale dated 20th July 1987 (hereinafter referred to as the "**Deed of Sale**" as stated in paragraph 14(2) of the Plaintiff's Statement of Claim).
- (4) Damages from the second Defendant for having evicted the Plaintiff from the Cul de Sac Distillery (as stated by paragraph 12 (1) of the Plaintiff's Statement of Claim).

Learned Counsel argued Nos. 1, 2 and 4 of the above mentioned heads together. He said that in essence the Plaintiff's Claim is that by virtue of the **Deed of Sale** the Plaintiff became the owner of the Cul de Sac Distillery.

He contended that if as is alleged by the Plaintiff, the Plaintiff and the first Defendant executed the Deed of Sale and that at the time of the execution of the Deed of Sale the Plaintiff paid the first Defendant the sum of US\$250,000 and took possession of the Cul de Sac Distillery then it was clear that the Plaintiff is relying on Article 1388 of the Civil Code which reads:

"A promise of Sale with delivery and actual possession is equivalent to Sale."

Learned Counsel however pointed out that Article 1390 of the Civil Code provides that:

"The articles of this book, in so far as they affect the rights of third persons are subject to the special modifications and restrictions contained in the Book respecting **Registration of Real Rights** and that the phrase "**this Book**" refers to Book Fifth which contains Articles 1382 to 1503 of the said Civil Code. (It is to be noted that Article 1388 falls within "this Book").

He contended that if indeed there was a validly executed Deed of Sale between the Plaintiff and the first defendant then it is uncontroverted that the Plaintiff failed to register the **Deed of Sale** at any time prior to 1st February, 1990 or even the 12th February, 1990 the dates of the execution of **The Agreement** and the placing of a caution on the Cul de Sac Distillery respectively. The said caution is referred to by paragraph 17 of the Plaintiff's Defence to Counterclaim.

He quoted **Book Eighteenth** of the Civil Code which is entitled **Registration of Real Rights** which commences at **Article 1967** which reads as follows:

"Registration gives effect to real rights and establishes their order of priority according to the provisions contained in this Book."

Article 1970 states:

"The notice received or knowledge acquired of an unregistered right belonging to a third party and subject to registration, cannot prejudice the rights of a subsequent purchaser for valuable consideration whose title is duly registered, except, when such title is derived from a bankrupt or a person notoriously insolvent."

Learned Counsel said that based on Article 1967 above it is Registration which gives effect to real rights as well as dictates their order of priority; that in 1984 the Land Registration Act was passed in Saint Lucia the result of which is that each parcel of land has its own register.

He quoted

Section 37 (1) of the Land Registration Act which reads as follows:

"No land, lease or hypothec registered under this Act shall be capable of being disposed of except in accordance with this Act, and every attempt to dispose of such land, lease or hypothec otherwise than in accordance with this Act shall be ineffectual to create, extinguish, transfer, vary or affect any right or interest in the land, lease or hypothec."

2. Section 56 (1) and (2) of the Land Registration Act reads as follows:

"(1) A proprietor, by an instrument in notarial form, may transfer his land lease or hypothec to any person with or without consideration.

(2) The transfer shall be completed by registration of the transferee as proprietor of the land, lease or hypothec and by filing the instrument."

He further quoted from **Section 38** of the Land Registration Act which states in part:

"No person dealing or proposing to deal for consideration with a proprietor shall be required or in any way concerned -

(a) to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered," and he said that "**Proprietor**"

is defined in the Act at Section 2 as follows:

"Proprietor" means the person registered under this Act
as the owner of land or a lease or a hypothec"

He submitted that on the 1st day of February, 1990 the first Defendant was the 'proprietor' of the Cul de Sac Distillery within the meaning of the Land Registration Act Section 2 and indeed on the 12th February, 1990 when the caution of the second named Defendant was lodged.

He said that this submission was fortified by **Coutume de Paris** by W. Cenac Q.C., Pages 92 to 93 **"Register as to Title."**

A caution was placed against the property in question at the Land Registry on the 12th of February, 1990.

Learned Counsel continued his submission by quoting the following Section 86 of the Land Registration Act which reads as follows:

"Any person who

- (a) claims any unregistrable interest whatsoever in land or lease or a hypothec may lodge a caution with the Registrar forbidding the registration of dispositions of the land, lease or hypothec concerned and the making of entries affecting the same."

Section 87 provides as follows:

"(1) "The Registrar shall give notice in writing of a caution to the proprietor whose land, lease or hypothec is affected by it.

- (2) So long as a caution remains registered, no disposition which is inconsistent with it shall be registered except with the consent of the cautioner or by order of the Court."

He said that the Land Registration Act 1925 of England is indeed jurisprudentially comparable to the Land Registration Act No. 12 of 1984 of Saint Lucia and therefore it is helpful to consider the learning expressed in the various texts and judgments from England, and quoted **Megarry and Wade 5th Edition Page 213 paragraph (2)**.

He argued that if the Plaintiff did, as he alleges in paragraph two (2) of his Statement of Claim, execute the Deed of Sale dated 20th July, 1937, this is before February 1990, then one must consider what effect it would have as against the second defendant. He referred to his earlier argument, which is noted, that it was registration which gives effect to real rights as well as orders their priority.

He then referred to Section 23 of the Land Registration Act which states that "the registration of any person as proprietor with absolute title of a parcel of land shall vest in that person the absolute ownership" in that land subject to certain rights with which we are not concerned in this matter.

He then quoted Section 38 of the said Act which states:

"(1) No person dealing or proposing to deal for consideration with a proprietor shall be required or in any way concerned -

(a) to inquire or ascertain the circumstance in, or the consideration for which such proprietor or any previous proprietor was registered; or

(b) to see to the application of any consideration or any part thereof; or

(c) to search any register kept under the provisions of Book Eighteenth of the Civil Code.

(2) Where the proprietor of land, a lease or a hypothec is a trustee he shall in dealing therewith be deemed to be the proprietor thereof, and no disposition by such trustee to

a purchaser in good faith and for consideration shall be defeasible by reason of the fact that such disposition amounted to a breach of trust.

- (3) Nothing contained in this Section shall relieve a purchaser in good faith and for consideration of his obligation to search the Registry."

He quoted the House of Lords decision of **Midland Bank Trust Co. Ltd vs Green and another** 1981 1 A.E.R 153 and asked the Court to bear in mind the words of Lord Wilberforce particularly at page 156 (g) to (l).

He contended that, even if there is in existence an agreement as between the Plaintiff and the first Defendant in relation to the **Cul de Sac Distillery**, which is land registered under the Land Registration Act, as stated in the Deed of Sale then the failure on the part of the Plaintiff to register his interest as required under the Civil Code and the Land Registration Act is fatal to the Plaintiff's Claim against the second Defendant as set out in numbers 1, 2 and 4 above.

Learned Counsel argued that since the close of the pleadings the Plaintiff has paid stamp duty on the **Deed of Sale** and attempted to register the same and quite properly the Registrar gave notice of that fact to the second defendant as a cautioner, as required under the Land Registration Act. He said that this new aspect raises the issue of priority of claims as between the Plaintiff and the second Defendant. He further stated that the Plaintiff has pleaded and the second Defendant has admitted that the second Defendant is in actual possession of the **Cul-de-Sac Distillery** and was in possession at the time that the Plaintiff attempted to register the Deed of Sale. Therefore the second Defendant has an overriding interest under Section 28 of the Land Registration Act and quoted the case of **Bridges v Mees** (1957) 2 A.E.R 577.

He then asked the question whether it could be said that the Plaintiff was in enjoyment of an overriding interest based upon the execution of the Deed of Sale and its alleged 'actual occupation' of the Cul de Sac Distillery. He said that **Williams & Glyn's Bank Ltd v Boland** 1980 2 A.E.R 408 and also **Abbey National Building Society v Cann and Another** 1990 1 A.E.R 1085 both state that the words 'actual occupation' is a question of fact for the Court to decide.

He argued that by paragraph 24 of the first defendant's **Defence and Counterclaim** the first defendant pleaded that the Plaintiff "failed to supervise, maintain or utilize the Distillery." He said that this allegation of fact was not traversed, it therefore should be regarded as an admission. **White Book 1993 Vol. 1 at page 324 Note 18/13/3.**

Learned Counsel referred to paragraph 11(3) of the Plaintiff's Statement of Claim in which the Plaintiff alleges that the first Defendant wrongly purporting, to be the owner of the Cul de Sac Distillery, executed an agreement in writing on 1st February, 1990 to sell the **Cul de Sac Distillery** and other lands to the second Defendant and wrongfully conspired with each other to injure the Plaintiff by the first Defendant committing a breach of the contract between the Plaintiff and the first Defendant contained in the said **Deed of Sale**.

He submitted that the essence of the Tort of Conspiracy is that a third person with knowledge of a contract between two other persons has dealings with one of the parties in a manner inconsistent with the existence of that contract. He stressed that there must be knowledge of the existence of the contract and an intention to interfere with its performance. **Merkur Island Shipping Corporation vs Laughton** 1983 2 A.E.R 189.

Secondly, that the action must be undertaken for the purpose of

injuring the Plaintiff Lonrho Ltd and others v Shell Petroleum Co. Ltd and others 1981 2 A.E.R 456.

He said, based on the above, there must be a contract between the Plaintiff and the first Defendant which was in existence on the 1st February, 1990 and that the second Defendant had knowledge of that contract. He said that three particulars of knowledge were pleaded by the Plaintiff.

Firstly, that the Plaintiff was in open and continuous possession of the Cul de Sac Distillery between 20th July, 1987 and 9th February, 1990 when the second Defendant evicted the Plaintiff.

Secondly, that, by letter, exhibit (L.C. 21) dated 2nd February, 1990, reference is made to a meeting "a few years ago, to the "time Spiricor purchased the distillery and its property from the Government of Saint Lucia. You were kind enough to send two gentlemen from your Saint Croix office to meet Prime Minister Compton and myself to discuss the installation of the distillery's two mooring buoys and the raw material pipeline in the Bay."

Learned Counsel submitted that this in effect refers to the time of the meeting, not the fact that there was knowledge in the second Defendant that the Plaintiff had purchased the property. He said that a perusal of letter dated 14th August, 1986 the Plaintiff refers to "with respect to an Agreement which I have just made with the Government of Saint Lucia." Yet by paragraph 3(a) of its reply, Plaintiff states that Memorandum of Understanding was dated 5/3/87 and Deed of Sale dated 20/7/87. The second Defendant denied that it was aware of any other Agreement between Plaintiff and the Government of Saint Lucia.

Thirdly, that the Plaintiff alleges that by Statutory Instrument No. 35 of 1987 of the Laws of Saint Lucia, the second Defendant should have gained knowledge of the Plaintiff's contract with the

first Defendant as far as it related to the Cul de Sac Distillery.

He argued that, infact, the uncontroverted evidence before the Court is that little, if any, construction took place and therefore the lack of activity at the Cul de Sac Distillery could lead one to conclude that the project was abandoned.

He argued strenuously and persuasively that since it was trite law that he who alleges must prove it was incumbent on the Plaintiff to prove the conspiracy between the Defendants.

He said that the contract which the Defendants are alleged to have conspired to break is none other than the Deed of Sale which it is agreed was unregistered at the material time (1st of February, 1990). He contended that Section 38 of the Land Registration Act quoted above applied to the situation.

He argued that the language of Section 38 of the Land Registration Act could not be clearer since what it did was to create an irrebuttable presumption that where a registrable interest is granted by a proprietor to another that other, will register his interest and that failure to do so will raise the presumption that no such interest exists. He further argued that even if the presumption was rebuttable, there would have to be very clear and controvertible evidence that the prime purpose of the transaction as between the Defendants was for the purpose of defeating the rights of the plaintiff.

Midland Bank Trust Co. Ltd v Green 1978 3 A.E.R 555.

He concluded by stressing that there had not been one iota of evidence to indicate that the intention of the Defendants was to injure the Plaintiff as pleaded by Paragraph 11 (3) of the Statement of Claim.

The arguments by Mr. P. J. Husbands Q.C., on behalf of the first

Defendant were very brief. He argued that the Plaintiff had breached the contract and that the evidential burden was on the Plaintiff to prove. He said that the Plaintiff took seven (7) years to register the Deed of Sale and asked the Court to note Exhibit L.C. 5.

I pause here to state that Exhibit L.C. 5 is a grant by the Crown to the Plaintiff of a servitude or easement over a servitude viz portion of the Queen's chain situate on Cul de Sac Bay, Castries, Saint Lucia, dated 13th July, 1987 and registered on the 20th day of July, 1987.

Learned Counsel said that the first Defendant denies all the allegations in the Statement of Claim in Paragraphs 2 - 12 which deals with ownership and paragraphs 13 and 14 which deals with claims for damages.

He said that the first Defendant denies all the allegations made by the Plaintiff in his Statement of Claim and argued that by the Memorandum of Understanding dated 11th September, 1986 (paragraph 4 of Defence), the Plaintiff did not adhere to the terms of the memorandum to refurbish the Cul de Sac Distillery and manufacture and market alcohol and beverage alcohol hereinafter referred to as the project.

He further argued that it was an implied condition of the Deed of Sale and conveyance that Plaintiff had an Alien's Landholding Licence to purchase and hold the Distillery. He said that the Alien's Landholding Licence was granted on condition that it was used solely for the project.

He also argued that the Plaintiff had not paid any stamp duty on the Alien's Landholding Licence and therefore he had no licence to purchase and hold the property for the project.

Paragraph nine (9) of the Defendant's (first Defendant) defence states that in the alternative the Defendant rightly rescinded the agreement.

He said that based on the evidence of Lisle Chase, Secretary of the Company, since its incorporation, who even had to sue the company for services rendered; who told the Court "That unless they are documents signed by me I cannot say whether they are true or not," all evidence on behalf of the Plaintiff was useless.

He contended that the payment of stamp duty on the Alien's Landholding Licence is mandatory and quoted **Section 17 of Alien's (Landholding Regulation) Act No. 10 of 1973 St. Lucia Laws.**

He said that (Exhibit L.C.4) Plaintiff's Alien's Landholding Licence registered on the 2nd July, 1987 was obtained by fraud since the cheque issued by Plaintiff to Barclays Bank was later dishonoured and therefore the stamp duty was obtained as a result of criminality and therefore is null and void.

He quoted many hypothetical situations which to me are irrelevant.

The thrust of the first Defendant's submissions were that :

- (1) The court will not sanction a claim by a party based on fraud;
- (2) Where no time is stated in a contract the Court will infer reasonable time for performance; and
- (3) Forfeiture of a property held by an unlicensed Alien.

He quoted the case of **Chase Manhattan Bank N.A. v Kaffke Berglund v Kaffke 1984 33 WLR Page 132** which deals with the consequences of an Alien's failure to register his Alien's Landholding Licence.

Learned Counsel for the Plaintiff submitted that the Plaintiff was

incorporated as a Limited Company under the Commercial Code of Saint Lucia on 4th March, 1987 (Exhibit L.C. 3); that on the 26th day of June, 1987 the Plaintiff cashed Barclays Bank PLC Draft #58360 in the sum of \$228,825.00 to be issued in favour of the first Defendant representing the stamp duty payable upon the grant of an Alien's Landholding Licence which said draft was deposited to the account of the Accountant General at the National Commercial Bank of Saint Lucia Ltd; that, that cheque was honoured by Barclays Bank as admitted by Richard Gomez under Cross Examination.

On the 1st July, 1987 an Alien's Landholding Licence was granted to the Plaintiff "to purchase and hold as owner the property." He asked that cognisance be taken of page 1 of the said licence on which is recorded the stamp duty of \$228,825.00 was paid.

He argued that the licence was duly registered on the 2/7/1987 in Vol. 140 as No. 158119 and has never been revoked, its registration has never been cancelled and that there has never been any order of any Court declaring a forfeiture of the Licence exhibited (as L.C.4).

He said that on the 10th of July, 1987 \$250,000 was paid by a Barclays Bank cheque in favour of the Accountant General and is not disputed; that a servitude over a portion of the Queen's chain by Crown grant was conveyed to the Plaintiff on the 13th of July, 1987 Registered on the 29/7/1989 in Vol. 140a No. 158431. He argued that this grant acknowledge the registration of the Alien's Licence and noted that the condition of the said licence was that it was "to be used for the purpose of a distillery." He contended that this grant and its stipulations was notice to the whole world of the presence of Plaintiff in the Cul-de-Sac Bay (Exhibit LC 5)

He said that Exhibit LC 6 was the Deed of Sale dated 20th July, 1987 by Her Majesty Queen Elizabeth, whom the first Defendant represents, to the Plaintiff for the price of \$1.13 million of

parcels 0645B 3, 0645B 7, 0645B 8 and 4645B 9 together with all plant equipment, machinery and boilers; that part of the purchase price was paid viz \$250,000.00 at the execution of the deed, and the balance was secured by Vendor's privilege which the Plaintiff covenanted to pay within 5 years with interest; that the sale was free and clear from all encumbrances except for the said Vendor's privilege.

He contended that by that deed immediate possession was granted to the Plaintiff and therefore the second Defendant was aware of the Plaintiff's interest in the land in dispute, moreover he said that on the 28th July, 1986 the Prime Minister had informed Leon Hess of the second Defendant, that the Government was negotiating the sale of the property in dispute to Pierre La Traverse (the Chairman and Managing Director of Spiricor) the Plaintiff (LC 29) and reminded Leon Hess of their discussion a few years earlier of the loading and unloading of the raw and refined products to and from the distillery.

That on the 14th August, 1986, the Managing Director of the Plaintiff wrote to the said Leon Hess informing him of the Agreement he had just made with the Government of Saint Lucia whereby he "would acquire the assets of the Distillery situated in Cul de Sac Bay; that by a further Letter of 28th November, 1986 (2nd exhibit under notice to admit documents tendered by the first Defendant numbered RI 2); the said Prime Minister again informed Leon Hess of negotiations of Sale of Inter Continental Distilleries to a group headed by Pierre La Traverse and required Hess to resolve certain issues so that the sale may be concluded.

Learned Counsel said that by Statutory Instrument No. 35 of 1987 proclaimed on the 25th day of July, 1987 and published in the official Gazette, the Plaintiff became an approved enterprise for the purpose of manufacturing certain declared products with its permanent factory at Cul de Sac.

Learned Counsel argued that by the Plaintiff's letter of 12th October, 1988 to Leon Hess proposing a business deal and referring to "our Saint Lucia plant" and "our adjacent sites in Cul de Sac," Hess was being informed that the Plaintiff was the owner of the property adjacent to Hess at Cul de Sac (Exhibit L.C. 33); that the posting of Security personnel on the site was notice to the world and indeed to the next door neighbour, Hess Oil, the second Defendant.

Counsel argued that if the second Defendant did not know of the Plaintiff's interest in the disputed land before its agreement for sale on the 1st February, 1990 with the first Defendant he should have known so upon receipt of letters dated 8th February, 1990 (Exhibit L.C. 22) 28th February, 1990 (Exhibit L.C. 25) and 23rd March, 1990 (Exhibit L.C. 26).

He contended that the Plaintiff had entered into possession of the land in dispute; that this fact could be ascertained by the claim of the first Defendant that he paid Plaintiff's security personnel up to 31st March, 1990. He reminded the Court that Lisle Chase also said he paid wages to the security personnel at least on one occasion. He argued that the above was proof that the Plaintiff had entered into possession.

Learned Counsel pointed out to the Court that the Memorandum of Understanding pleaded by the first Defendant (4th paragraph) was never put into evidence. He stressed that the Deed of Sale was unconditional and that the Alien's Licence was granted on the condition that a distillery be established.

The Second Schedule to the said licence reads:

"The property is to be used for the purpose of
establishing a distillery"

He contended that the various letters to the first Defendant from the Plaintiff clearly showed that the Plaintiff was investment-broking and that the Plaintiff did not have the funds to implement the project hence the reason why the first Defendant gave the Plaintiff five years to secure the balance of the purchase price. He said that the letter of 18th May, 1988 (Exhibit L.C. 9) from the Prime Minister to the Plaintiff showed that the first Defendant knew of and approved of the Plaintiff's investment broking.

Counsel vehemently argued that there was no evidence of fraud by the Plaintiff or its Managing Director as was argued by Learned Counsel for the first Defendant. He denied that the cheque for the Alien's Landholding Licence was dishonoured by the bank. He went through in chronological the order the letters received from the Prime Minister which indicated that the latter purported to terminate the contract between the Plaintiff and the first Defendant. The first letter was dated 9th August, 1988. In that letter the Prime Minister stated that the Government was "

terminating any agreement Government may have had
for the sale of the property to your Company."

He concluded his arguments on the facts and said that there is no evidence that the second Defendant ever obtained an Alien's Landholding Licence.

Counsel's submission on the law were as follows:

- (1) Firstly, that the Plaintiff's unregistered Deed of Sale operated as a contract binding on the Plaintiff and the first Defendant.

Section 37 (2) Land Registration Act 1984.

Demers, Traite de Droit Civil du Quebec pp 322 - 331.

Act 1967 of the Civil Code.

"Registration gives effect to real rights and establishes

their order of priority....."

He said that Demers at page 30 states:

"But the lack of registration does not render the instrument null so far as the parties to it are concerned. Who remains bound to it and are not released from their obligations" Registration does not Constitute the title of the owner..... Registration protects a right, it notes it, it publishes it, but the absence of Registration does not render the title null, it does not affect the validity of the title"

He further quoted **Articles 1968 and 1980 of the Civil Code** and related **Demers'** comments to them.

He argued that the agreement of the Defendants have never been registered as the lodging of a caution does not constitute the registration of a right and quoted **Civil Appeal No. 11 of 1991**

(1) **Peter Jn. Marie**

(2) **Clotilda Jn. Marie**

and

(1) **Laurima Lowrie**

(2) **J. C. Collymore Ltd.**

Page 3 paragraph 6 where **Byron J. A.** said:

"Looking at the scheme of the legislation a caution does not confer any interest on the cautioner. It is based on an interest which the cautioner claims to have. It does not provide any priority for the cautioner. It provides machinery whereby any person who claims certain interests will have an opportunity to object to the registration of any disposition or the making of entries affecting the same."

He quoted the Land Registration Act No. 12 of 1984 Section 11 (1).

"The first registration of any parcel shall be effected

by the preparation of a register in accordance with the provision of Section 9 and the signing by the Registrar of the particulars of the ownership and the particulars of encumbrances, if any, appearing thereon.

- (2) Every subsequent registration shall be effected by an entry in the register in such form as the Registrar may from time to time direct, and by the cancellation of the entry, if any, which it replaces."

He submitted that the effect of Sections 3 and 4 (2) (c) of the Alien's (Landholding Regulation) Act is that the second Defendant is an unlicenced alien and incapable of holding the land in dispute even if its interest predated that of the Plaintiff, which it did not.

He contended that the words "shall be forfeited" in the Alien's Landholding Act means liable to forfeiture.

Attorney General v Parsang 1956 1 A.E.R page 65.

He further submitted that even if the Defendants could prove the commission of an illegality in the performance of the contract, which is strenuously denied by the Plaintiff this does not render the contract illegal and enforceable.

Paragraphs 16010 Chitty on Contracts Vol. 1 27th Edition

He said that by virtue of **Article 1397** of the Civil Code the agreement between the Defendants of the 1st of February, 1990 was and is null on the ground that on the date thereof the distillery and curtilage did not belong to the first Defendant and quoted **Bridges v Mees 1957 2 A.E.R 577.**

Article 1397 of the Civil Code reads:

"The sale of a thing which does not belong to the seller is null."

Learned Counsel contended that the voluntary payments including that to Barclays Bank of \$228,825.00 by the first Defendant are not recoverable and quoted **Chitty on Contracts of Vol. 1 27th Edition paragraphs 29 - 088, 29 -093** and stressed that "Liabilities are not to be forced upon people behind their backs."

He argued that the Plaintiff did not repudiate the Contract of Sale and quoted **Halsbury's Laws 4th Edition Vol. 9 paragraphs 479 - 486 and 535 - 558**. He submitted that, infact, it was the first Defendant who breached the warranty against eviction which he owed to the Plaintiff, when he wrote to the Plaintiff stating "the Government of Saint Lucia as the sole owner of the distillery at Cul de Sac, Saint Lucia and the lands comprising the curtilage of the said distillery have sold the said property to Hess Oil (Saint Lucia) Ltd and has placed Hess Oil into possession of the same as from the 1st February, 1990 (Exhibit L.C. 36)."

He further quoted the Articles of the Civil Code which deal with Warranty, e.g. Articles 1416, 1417, 1418, 1421, 1424, 1445.

He contended that on the facts the second Defendant knowingly and without reasonable justification or excuse procured the first Defendant to break its contract with the Plaintiff and quoted **Clerk and Lindsell on Tort 16th Edition 15-02, 15-03, 15-04, 15-08, 15-12**.

He argued that by the agreement of the 1st February, 1990 between the Defendants, it again can clearly be seen that the Defendants wrongfully conspired with each other to injure the Plaintiff by the first Defendant committing a breach of the Contract between the Plaintiff and the first Defendant contained in the Deed of Sale of 20th July, 1987.

He quoted the paragraphs that dealt with the Tort of Conspiracy in **Clerk and Lindsell on Torts 16th Edition**.

He argued that the Plaintiff was entitled to exemplary damages and quoted **Mc. Gregor on Damages 14th Edition pages 1101 c - e.**

He also contended that the Plaintiff was in actual occupation when evicted by the second Defendant.

He argued that based on Richard Gomez's evidence the stamp duty on the Plaintiff's Alien's Landholding Licence was duly paid.

He concluded his submissions by stating that the Plaintiff was also entitled to interest on its award of damages from the period when the cause of action arose.

CONCLUSIONS:

I will deal firstly with the Plaintiff's case against the second Defendant. The Plaintiff claims that the agreement between the first Defendant and the second Defendant dated 1st February, 1990 is null and void because on that date the first Defendant was not the owner of the land in question viz land situate at Cul de Sac, Castries, Saint Lucia and shown on the Land Registry map as parcel numbers 0645B 3, 0645B 7, 0645B 8 and 0645B 9 because at that date it belonged to the Plaintiff, he having acquired it from the first Defendant on the 20th day of July, 1987 for the sum of \$1,130,000.00. A perusal of the four registers exhibited by the second Defendant through Barbara Pierre clearly shows that these four parcels of land mentioned above are in the name of the Crown who is represented by the Attorney General of Saint Lucia, the first Defendant in this suit.

In Book Eighteenth of the Civil Code of Saint Lucia entitled "Registration of Real Rights" Article 1967 provides

"Registration gives effect to real rights and
establishes their order of priority"

I will now quote relevant sections of the Land Registration Act

1984.

Section 37 (1) states:

"No land, lease or hypothec registered under this Act shall be capable of being disposed of except in accordance with this Act, and every attempt to dispose of such land, lease or hypothec otherwise than in accordance with this act shall be uneffectual to create, extinguish, transfer, vary or affect any right or interest in the land, lease or hypothec."

Section 56(1) reads as follows:

"(1) A proprietor, by an instrument in Notarial form may transfer his land, lease or hypothec to any person with or without consideration.

(2) The transfer shall be completed by registration of the transferee as proprietor of the land, lease or hypothec and by filing the instrument."

Section 2 reads:

"Proprietor" means the person registered under this Act as the owner of land or a lease or hypothec."

As stated earlier, the parcels of land known as the Cul de Sac Distillery, are registered in the name of the Crown. The Crown is noted in the Land Registry as proprietor.

This being so, it is my view after careful consideration of the relevant law that on the 1st of February, 1990 the first Defendant was the registered owner of the "Cul de Sac Distillery" and as such could contract with anyone and indeed the second Defendant, for the sale of the said "Distillery."

The Plaintiff also claimed that while in open and continuous possession of the said "Distillery" from the 20th of July, 1987 it

was evicted from the same by the second Defendant.

As I see it, whether the Plaintiff was in possession is a question of fact for the Court to decide.

The evidence discloses that monies were paid for the insurance and to persons who acted as security at the "Distillery" by the first Defendant who up to 1990 exhibited a document for the amount of \$212,015.43 to that effect. This, in my opinion is the natural consequence, a duty of an owner of a distillery and is proof that in February 1990 the first Defendant was in possession of the Distillery.

The Plaintiff however contends that it was the owner in possession at that time in question though it agrees that on or about the 9th of February, 1990 it was evicted by the second Defendant who is presently in actual possession.

It is to be noted that by paragraph 16 of the Plaintiff's Reply and Defence to Counter Claim of the first named Defendant the Plaintiff pleaded that "the Plaintiff never requested such payment and/or the said Defendant never incurred such expenses or any of them as the Plaintiff's agent."

It therefore follows that it was the first Defendant who was owner in actual possession on the 1st of February, 1990.

Abbey National Building Society v Cann and another 1990 1 A.E.R 1085.

It is undisputed that following the agreement between the defendants, the second Defendant entered into possession. The evidence also discloses that on the 12th day of February, 1990 the second Defendant entered a caution against the property (the four parcels of land which formed the Distillery) at the Land Registry. At that time the only entry on the registers was that of the first

named Defendant as 'owner'.

Section 38 of the Land Registration Act 1984 states:

- "(1) No person dealing or proposing to deal for consideration with a proprietor shall be required or in any way concerned
- (a) to inquire or ascertain the circumstances in, or the consideration for which such proprietor or any previous proprietor was registered; or
 - (b) to see to the application of any consideration or any part thereof, or
 - (c) to search any register kept under the provisions of Book Eighteenth of the Civil Code.
- (2) Where the proprietor of land, a lease or a hypothec is a trustee he shall in dealing therewith be deemed to be the proprietor thereof, and no disposition to a purchaser in good faith and for consideration shall be defeasible by reason of the fact, that such disposition amounted to a breach of trust.
- (3) Nothing contained in this section shall relieve a purchaser in good faith and for consideration of his obligation to search the Registry. "

In **Midland Bank Trust Co. Ltd v Green and another** (1981) 1 A.E.R. 153 at page 156 Letter 9 Lord Wilberforce reiterates that the word "Purchaser means any person..... who for valuable consideration, takes any interest in land....."

The land which forms the Cul de Sac Distillery is land registerable under the Land Registration Act and the Plaintiff's interest was not registered on the 1st of February, 1990 and indeed on the 12th

of February 1990 when the second Defendant entered the caution. This statement therefore, in my opinion, begs the question, is a caution an interest?

In Civil Appeal No. 11 of 1991 **Peter Jn Marie, Clotilda Jn. Marie vs Laurima Lowrie and I.J.C. Collymore Ltd.** Byron J. A. had this to say at Page 3 "a caution does not confer any interest on the cautioner. It is based on an interest which the cautioner claims to have. It does not provide any priority for the cautioner. It provides machinery whereby any person who claims certain interests will have an opportunity to object to the registration of any disposition or the making of entries affecting the same."

Therefore in accordance with the above mentioned case the second Defendant was entitled to ensure that its right to eventual ownership was not negated by the vendor, the first named Defendant until legal title was vested in it by registration as proprietor in accordance with Section 23 of the Act.

The Plaintiff quoted **Bridges v Mees** 1967 2 A.E.R. Page 577 as authority that the Plaintiff had an overriding interest against the property. I do not agree with the submission. In **Bridges v Mees** full payment of the purchase price had been made to the Company and that the Plaintiff had been in possession of the property for twelve years (statute of limitation could run in his favour). Therefore the Defendant's registrable title was subject to the overriding interest of the Plaintiff .

In my view, in this case, the second named Defendant is not subject to any overriding interest in favour of the Plaintiff.

The Plaintiff pleaded at paragraph 11(3) of its Statement of Claim that the Defendants wrongfully conspired with each other to injure the Plaintiff by the first named Defendant committing a breach of the contract which contract is contained in the Deed of Sale dated

20th July, 1987.

The tort of conspiracy though having a wide theoretical range, in simple language means that a third person, with knowledge of a contract between two other persons has dealings with one of the parties in a manner inconsistent with the existence of that contract.

In **Merkur Island Shipping Corporation v Laughton and others** 1983 2 A.E.R Page 189 at Page 196 Lord Diplock said there must be "knowledge of the existence of the contract concerned and (2) intention to interfere with its performance."

In **Lonrho Ltd and others v Shell Petroleum Co. Ltd and others** (1981) 2 A.E.R 456 it was held that "The scope of the tort of conspiracy was restricted to acts done in the execution of an agreement between two or more persons for the purpose of injuring the Plaintiff's interest and did not extend to acts done by such persons merely for the purpose of protecting their own interests."

Based on the relevant law in order to find that the second Defendant conspired with the first Defendant to injure the Plaintiff, I must find that there was a valid contract between the Plaintiff and the first Defendant (which conclusion I will state later).

With reference to the contention that the second Defendant knew of the existence of that contract and intended to interfere with the performance of that contract, the various letters were tendered by the Plaintiff (Exhibits LC 29 and 30).

In exhibit L.C. 30 a letter dated 14th August, 1986 from the Plaintiff to the second Defendant, the former states in the first paragraph "I would like to meet you with respect to an agreement which I have just made with the Government of Saint Lucia." It is to be noted that the Plaintiff pleaded by paragraph 3(a) of its

Reply and Defence to Counter Claim that the **Memorandum of Understanding** and the alleged **Deed of Sale** took place in 1987.

In my Judgment the Plaintiff has not proved that the second Defendant knew of the existence of any contract between the Plaintiff and the first Defendant.

I will now consider the case of the Plaintiff against the first Defendant.

The Plaintiff claims that there was a contract, a Deed of Sale for the Cul de Sac Distillery between the first Defendant and itself dated 20th July, 1987; that part of the purchase price was paid and the balance secured by vendor's privilege to be paid within five years of the Deed of Sale and that upon execution it immediately entered into possession of the said Distillery.

The first Defendant admits the Deed of Sale of 20th July 1987, but states that there was a previous document, a Memorandum of Understanding which contained the purpose for the Deed of Sale. Unfortunately, this document was not tendered at the trial as stated earlier.

The first Defendant's contention is that it was an implied condition of the Deed of Sale and conveyance that the Plaintiff had an Alien's Landholding Licence and the Plaintiff has exhibited a duly registered Alien Landholding Licence. However, the evidence disclosed that the cheque was dishonoured and the amount paid for the said Alien's Landholding Licence was eventually refunded to Barclays Bank (Exhibit H.A.1) on the 15th of November 1989, request having been made by Barclays Bank since 21st of January, 1988 (Exhibit RG1).

The first Defendant further contends that since the licence was obtained by fraud then it is a fraudulent misrepresentation. What

then is the effect of such a representation?

It is trite law that a fraudulent misrepresentation renders a contract voidable and that the party who has been misled may "avoid" the contract and all he has to do is to give notice, by words or conduct that he refuses to be bound by it.

Did the first Defendant give any such notice to the Plaintiff?

By letter dated 9th August, 1988 (Exhibit L.C.31) the first Defendant wrote to the Plaintiff. I now reproduce that letter in its entirety.

"9th August, 1988

Mr. Pierre P. La Traverse
390 Bay Street
Suite 1506
Toronto
CANADA M5H 2Y2

Sir

CUL DE SAC DISTILLERY

I am returning your cheque NO. 021 for \$25,000.00 which is intended as consideration for the deferment of the interest due on the capital sum for the Cul de Sac Distillery.

You will recall that the agreement for the deferment was made only after you had given firm assurances that you had made satisfactory arrangements for financing the operations of the distillery and the marketing of the products, and to this end you introduced representatives of two companies who you stated would be associated with you in this venture.

I have since received a "privileged and confidential" correspondence from one of the companies which you introduced as an associate in this project, stating that that company had terminated discussions with you and had no further interest in the project.

Because of your failure to meet numerous undertakings previously given by you regarding the distillery, including the non-payment of (1) interest, (2) the insurance on the property, (3) the workers' wages, (4) your attorney's fees and (5) the dishonouring of one cheque presented to pay the Alien's Licence fees, Government no longer has any confidence in your ability to meet your commitments to get the distillery operational and consequently is terminating any agreement Government may have made for the sale of the property to your company.

Government intends to repossess the property on the 15th August 1988. Government however as an ex gratia gesture will refund you in full the deposit made on the purchase price and will

pay to Barclays Bank the cheque for the Alien's Landholding Licence which has been dishonoured by the Bank upon which it was drawn, and which is now the subject of litigation in St. Lucia.

I regret that government has been forced to resort to this drastic measure, but it is important that in a venture such as this, Government should have full confidence in any one to whom such a valuable property is entrusted.

Yours faithfully,

.....
Prime Minister "

In my judgment the above noted letter is good notice to "avoid" or terminate any contract there may have been between the Plaintiff and the first Defendant.

In a further letter dated 13th September 1988 (L.C.32) the first Defendant reminded the Plaintiff of its notice to repossess.

As I see it the contract entered into by the Plaintiff and the first Defendant on the 20th July 1987, was breached by the Plaintiff and the first Defendant treated the contract as discharged and thereupon informed the Plaintiff of its intention to do so (treat the contract as such).

It is my view that the Plaintiff is in actual breach for non performance of the contract.

Based on this conclusion I now state that there was no contract between the Plaintiff and the first Defendant on the 1st of February, 1990 for the Defendants to conspire to injure the Plaintiff.

If the first Defendant paid salaries, wages and insurance to protect its property, it cannot claim the amount of \$212.015.43 from the Plaintiff. Therefore its Counterclaim must fail.

My order is therefore as follows:

- (1) That the Plaintiff's case against the first and second Defendants is dismissed.
- (2) The first Defendant's Counterclaim is also dismissed.
- (3) That the Plaintiff is to pay costs to both Defendants to be agreed or otherwise taxed.

.....
SUZIE d'Auvergne
Puisne Judge