

4

IN THE PRIVY COUNCIL

No. 10 of 1973

O N A P P E A L  
FROM THE COURT OF APPEAL OF JAMAICA

---

B E T W E E N :-

ROSE HALL LIMITED                      Appellant

- and -

ELIZABETH LOVEJOY REEVES      Respondent

---

RECORD OF PROCEEDINGS

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CHARLES RUSSELL & CO.,  
Hale Court,  
Lincoln's Inn,  
LONDON, WC2A 3UL.  
Solicitors for the Appellant

DRUCES & ATTLEE,  
115, Moorgate,  
LONDON,  
EC2M 6YA.  
Solicitors for the Respondent

ON APPEAL  
FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :-

ROSE HALL LIMITED

Appellant

- and -

ELIZABETH LOVEJOY REEVES

Respondent

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No. 10 of 1973

O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

ROSE HALL LIMITED

Appellant

- and -

ELIZABETH LOVEJOY REEVES

Respondent

RECORD OF PROCEEDINGS

No. 1

In the  
Supreme Court  
of Jamaica

A M E N D E D

STATEMENT OF CLAIM

No. 1

Suit No. C.L. 716 of 1968

Amended  
Statement  
of Claim

In the Supreme Court of Judicature of Jamaica

14th October  
1968

COMMON LAW

BETWEEN ELIZABETH LOVEJOY REEVES Plaintiff

A N D ROSE HALL LIMITED Defendant

10

1. By an agreement in writing made on the 4th April 1961 and signed by the Defendant's agent, the Defendant agreed to sell and the Plaintiff agreed to buy two parcels of land described in the said agreement as follows:-

20

All those two parcels of land part of the Rose Hall Estates situate in the Parish of Saint James (hereinafter referred to as "the Property") referred to as Block C and Block D delineated and outlined in red on the Plan No. F.51 signed by or on behalf of the parties hereto and being the land butting

In the  
Supreme Court  
of Jamaica

—  
No. 1

Amended  
Statement  
of Claim

14th October  
1968  
(continued)

Northerly on the sea Southerly on the proposed main road from Montego Bay to Falmouth, Easterly on the centre line of a gully and Westerly on Block B being the land reserved by the Vendors for a beach club and for bathing purposes.

2. The said lands formed part of the lands registered at Vol.837 Fol.92, Vol.962 Fol.387, Vol.1003 Fol.443, Vol.1023 Fol.402 and Vol.957 Fol.257 and being the lots numbered 2, 2A, 2B, 3, 3A, 3B, 3C and 3D on the Plan bearing Survey Department Examination number 70101. 10
3. The purchase price provided for in the said agreement was £50,000.0.0. payable as to £12,500.0.0. by way of a deposit on the signing of the agreement, a further £12,500.0.0. three years from the date thereof, and the balance within 10 years.
4. The Plaintiff has paid to the Defendant the sum of £25,000.0.0. and has entered into and remained in possession of the said land as provided for in clause 6 of the said agreement. 20
5. The Plaintiff will at the trial refer to the said agreement for its full terms and effect.
6. The Plaintiff is and has at all material times been ready willing and able to fulfil her obligations under the said agreement according to its terms.
7. The Defendant has refused to accept payment of the balance of the said purchase price, and has purported to repudiate the said agreement of sale abovementioned and claims that the land the subject of the said sale has subsequently been sold to some third party. 30
8. By reason of the premises the Plaintiff claims
- (a) Specific Performance of the said Agreement of Sale.
- (b) Further, or in the alternative, damages for breach of contract.



(c) Such further or other relief as may be just.

SETTLED.

David H. Coore, Q.C.

FILED & DATED this 12th day of September 1968.

of No.45 Duke Street,  
Kingston, Solicitors, Town Agents  
for Nation, Lord & DeLisser of  
Montego Bay, St. James, Solicitors  
for the Plaintiff herein.

In the  
Supreme Court  
of Jamaica

          
No. 1

Amended  
Statement  
of Claim

14th October  
1968  
(continued)

10 THIS WRIT was issued by A.E. BRANDON & CO., of  
45 Duke Street, Kingston, Solicitors, Town Agents  
for Nation, Lord & DeLisser of Montego Bay in the  
Parish of Saint James, Solicitors for the  
Plaintiff herein who resides at No.4 Cedar Island,  
Larchmont, New York, United States of America and  
whose address for service is care of her said  
Solicitors' Town Agents.

No. 2

SUMMONS FOR INJUNCTION

Suit No. C.L.716 of 1968

In the Supreme Court of Judicature of Jamaica

COMMON LAW

BETWEEN            ELIZABETH LOVEJOY REEVES            PLAINTIFF

A N D                            ROSE HALL LIMITED            DEFENDANT

No. 2

Summons for  
Injunction

1st October  
1968

20

30

LET ALL PARTIES CONCERNED attend before a  
Judge in Chambers at the Supreme Court, Public  
Buildings, King Street, East Block, Kingston on  
Wednesday the 9th day of October 1968 at the hour  
of ten o'clock in the forenoon on the hearing of  
an application on the part of the Plaintiff for  
an order:-

In the  
Supreme Court  
of Jamaica

No. 2

Summons for  
Injunction

1st October  
1968

(continued)

1. THAT the Defendant, its servants and agents be restrained from selling, transferring, leasing, mortgaging or in any way disposing of the lands the subject of this suit until Judgment in this action (and until any decree for specific performance in any such judgment shall have been complied with).

2. An Order addressed to the Registrar of Titles prohibiting him from registering any dealing under the Registration of Titles Law with respect to the lands the subject of this action until further order of the Court.

10

3. THAT the Defendant do pay the costs of and incident to the Summons and Order herein.

DATED the 1st DAY OF OCTOBER 1968.

A. E. BRANDON & CO.

Solicitors Town Agents  
for Nation, Lord & DeLisser of  
Montego Bay, Saint James,  
Solicitors for the Plaintiff  
herein.

20

FILED by A.E. BRANDON & CO., of 45 Duke Street,  
Kingston, Solicitors Town Agents for Nation,  
Lord & DeLisser of Montego Bay, Saint James,  
Solicitors for the Plaintiff herein.

No. 3

Affidavit in  
Support of  
Application  
for  
Injunction

1st October  
1968

No. 3

AFFIDAVIT IN SUPPORT OF  
APPLICATION FOR INJUNCTION

Suit No.C.L.716 of 1968

30

In the Supreme Court of Judicature of Jamaica

COMMON LAW

BETWEEN ELIZABETH LOVEJOY REEVES PLAINTIFF

A N D ROSE HALL LIMITED DEFENDANT

I, DOUGLAS IAN BRANDON, being duly sworn  
make oath and say:-

In the  
Supreme Court  
of Jamaica

\_\_\_\_\_  
No. 3

Affidavit in  
Support of  
Application  
for  
Injunction

1st October  
1968

(continued)

1. THAT my true place of abode is at 14 Easton Avenue in the Parish of Saint Andrew, my postal address is Post Office Box 131, Kingston Post Office and I am a Solicitor of the Supreme Court of Judicature of Jamaica and a member of the firm of A.E. BRANDON & CO., of 45 Duke Street, Kingston, Solicitors, Town Agents for Nation, Lord & DeLisser of Montego Bay, Saint James, Solicitors for the Plaintiff herein.

10

2. THAT I am informed that the Writ of Summons in this suit was served on the Defendant Company on the 17th September 1968.

3. THAT the Plaintiff alleges that an Agreement for Sale in writing (of the lands referred to in paragraph 2 of the Statement of Claim herein) was made with the Defendant's agent on the 4th April 1961 and I exhibit herewith marked with the letter "A" a copy of an agreement for sale which I received from Nation, Lord & DeLisser, and which I verily believe to be a copy of the agreement for sale referred to in paragraph 1 of the Statement of Claim.

20

4. THAT the Plaintiff caused a caveat to be lodged (prior to this action being commenced) prohibiting dealings (by the Defendant) with the lands the subject of this action.

5. THAT the Plaintiff's Solicitors Nation, Lord & DeLisser have received a notice from the Registrar of Titles dated 25th September 1968 to the effect that the caveat lodged by the Plaintiff shall be deemed to have lapsed within 14 days from the date of the said notice. The notice I am informed by the Registrar was posted by him on the 25th September and that he estimates that the same will expire on the 13th October 1968 (that is fourteen days as prescribed by section 134 of the Registration of Titles Law) plus a reasonable time of 4 days for the notice to be received.

30

40

6. THE Plaintiff therefore must take steps before the 13th October 1968 to prevent the Defendant from disposing of the land the subject of this suit. The Defendant has in fact lodged

In the  
Supreme Court  
of Jamaica

—  
No. 3

Affidavit in  
Support of  
Application  
for  
Injunction

1st October  
1968

(continued)

at the Office of Titles a transfer (numbered 243094 of the lands the subject of this suit) in favour of NORTH WESTERN ENTERPRISES LIMITED a company with offices at 58 Duke Street, Kingston for the sum of Sixty-five Thousand Pounds. The said transfer was lodged in the Office of Titles on the 13th September 1968 and is dated the 12th September 1968. The transfer will be recognised by the Registrar of Titles after the 13th October 1968 unless the Plaintiff obtains in the mean- while an injunction restraining dealings with the lands the subject of the transfer.

10

7. THAT I am informed by Nation, Lord & DeLisser and verily believe that the Plaintiff is off the Island and it would not be possible for an affidavit to be obtained from her in time for the hearing of the Summons for an Injunction.

8. IF the lands the subject of this action are disposed of before the trial of the suit the injury to the Plaintiff's rights would be such that compensation would not be a satisfactory remedy.

20

(Sgd.) DOUGLAS BRANDON

SWORN to at Kingston in the Parish of Kingston this 1st day of October, 1968.

H. W. BOLTON

Justice of the Peace

FILED by A.E. BRANDON & CO., of 45 Duke Street, Kingston, Solicitors Town Agents for Nation, Lord & DeLisser of Montego Bay, Saint James, Solicitors for the Plaintiff herein.

30

No. 4

SUMMONS FOR JUDGMENT

Suit No. C.L. 716 of 1968

In the  
Supreme Court  
of Jamaica

No. 4

Summons for  
Judgment

2nd October  
1968

In the Supreme Court of Judicature of Jamaica

COMMON LAW

BETWEEN            ELIZABETH LOVEJOY REEVES            PLAINTIFF  
A N D                            ROSE HALL LIMITED            DEFENDANT

LET ALL PARTIES CONCERNED attend the Judge in  
Chambers on Wednesday the 9th day of October 1968  
at 10 o'clock in the forenoon or so soon thereafter  
as Counsel can be heard on the hearing of an  
application on the part of the Plaintiff for the  
following relief:-

1. Pursuant to Section 86A of the Civil Procedure Code Cap.177 of the Revised Laws for specific performance of the agreement in the Writ in this action mentioned in the terms of the minutes thereto annexed.
2. Or alternatively that directions may be given as to the Pleadings and other matters in this action, or such other order may be made as to the Judge shall seem meet.

SETTLED.

David H. Coore Q.C.

DATED THE 2nd DAY OF OCTOBER 1968.

A.E. BRANDON & CO.,

of No. 45 Duke Street,  
Kingston, Solicitors Town Agents  
for Nation, Lord & DeLisser of  
Montego Bay, St. James, Solicitors  
for the Plaintiff herein.

FILED by A.E. BRANDON & CO., of 45 Duke Street,  
Kingston, Solicitors Town Agents for Nation, Lord  
& DeLisser of Montego Bay, St. James, Solicitors  
for the Plaintiff herein.

In the  
Supreme Court  
of Jamaica

No. 5

MINUTE OF ORDER

No. 5

Suit No. C. L. 716 of 1968

Minute of  
Order

2nd October  
1968

In the Supreme Court of Judicature of Jamaica

COMMON LAW

BETWEEN	ELIZABETH LOVEJOY REEVES	PLAINTIFF
A N D	ROSE HALL LIMITED	DEFENDANT

DECLARE that the agreement dated the 4th day of April, 1961 in the Writ of Summons mentioned ought to be specifically performed and carried into execution.

10

LET THE FOLLOWING INQUIRY BE MADE:-

A. An inquiry what damages have been sustained by the Plaintiff by reason of the Defendant not having specifically performed the said agreement.

B. An order in the following terms:-

1. A declaration that the agreement dated the 4th day of April 1961 in the Writ of Summons mentioned ought to be specifically performed and carried into execution.

20

2. That an account be taken by the Registrar of the Supreme Court of what is due (if any) to the Defendant for the balance of purchase money, interest and costs of transfer. The Registrar of the Supreme Court shall notify the parties (by registered post) of the date and time of the taking of the said account, such notice to be posted at least 7 days before the date fixed for taking of such account (to such addresses as the Court may order).

30

3. That the Plaintiff do tender the sum so found by the Registrar to be due by her to the Defendant at the Office of the Registrar of the Supreme Court within

21 days of the date of the taking of the account in exchange for which the Defendant shall tender to the Plaintiff a stamped executed and registrable transfer in favour of the Plaintiff or her nominee (and all deeds Duplicate Certificates of Title and writings relating thereto exclusively) of the lands the subject of this action being lots 2, 2A, 2B, 3, 3A, 3B, 3C and 3D referred to in the amended Statement of Claim and the Defendant shall thereupon deliver vacant possession of the said lands to the Plaintiff. The Plaintiff shall inform the Defendant of the precise date and time at which the said exchange shall take place by written notice sent to the Defendant (at an address to be specified in the order herein) by registered post at least three days before the date fixed for the said exchange.

4. That the Plaintiff shall be at liberty to deduct (on the date fixed for the tender) the taxed or agreed costs of this suit from the amount (if any) found to be due to the Plaintiff under paragraph 2 herein.

5. If the Defendant shall fail neglect or refuse to tender an executed and registrable transfer to the Plaintiff at the time and date specified by the order herein the Plaintiff shall be at liberty within 7 days thereafter to tender a transfer to the Registrar of the Supreme Court (by virtue of Section 650 of the Judicature Civil Procedure Code) Law a transfer of the said lands and the same shall be executed by a Judge of the Supreme Court and returned to the Plaintiff and the same shall be effective for all purposes as if the same shall have been executed by the Defendant. The Plaintiff shall in exchange for the said transfer pay the amount due to the Defendant (after deduction of the amount specified in paragraph 3 hereof and half the stamp and registration fees advanced by the Plaintiff and Solicitors costs of same) into Court.

6. That an injunction be granted restraining the Defendant, its servants and agents

In the  
Supreme Court  
of Jamaica

—  
No. 5

Minute of  
Order

2nd October  
1968

(continued)

In the  
Supreme Court  
of Jamaica

—  
No. 5

Minute of  
Order

2nd October  
1968  
(continued)

from selling, transferring, leasing, mortgaging or in any way disposing of the lands the subject of this action (until the terms of the order sought herein shall have been complied with or completed).

7. That the Registrar of Titles be prohibited from registering any dealing under the Registration of Titles law with respect to the lands the subject of this action until the terms of the order made on this motion shall have been complied with.

10

8. That the Defendant do pay the costs of and incident to this suit.

9. Further or other relief.

10. And the parties are to be at liberty to apply.

DATED THE 2nd DAY OF OCTOBER 1968.

A. E. BRANDON & CO.

of No. 45 Duke Street,  
Kingston, Solicitors Town Agents  
for Nation, Lord & DeLisser of  
Montego Bay, St. James, Solicitors  
for the Plaintiff herein.

20

FILED by A.E. BRANDON & CO., of 45 Duke Street,  
Kingston, Solicitors Town Agents for Nation, Lord  
& DeLisser of Montego Bay, Saint James,  
Solicitors for the Plaintiff herein.



No. 6

AFFIDAVIT IN SUPPORT OF SUMMONS FOR  
JUDGMENT

In the  
Supreme Court  
of Jamaica

No. 6

Affidavit in  
support of  
Summons for  
Judgment

1st October  
1968

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN THE HIGH COURT OF JUSTICE  
SUIT NO.

IN EQUITY

BETWEEN            ELIZABETH LOVEJOY REEVES            PLAINTIFF  
A N D                    ROSE HALL LIMITED                    DEFENDANT

10            I, BRIAN CHARLES O'BRIEN NATION being duly  
sworn make oath and say as follows:

1.    That my true place of abode is at "Carlisle"  
Reading in the Parish of Saint James; my postal  
address is Post Office Box 334, Montego Bay and I  
am a Solicitor of the Supreme Court of Jamaica being  
the senior partner of the firm of Solicitors known  
as Nation, Lord & deLisser.

20            2.    That my said firm represents the above-named  
Plaintiff in these proceedings and I can depose  
positively as to the truth of all the facts stated  
herein as the result of information acquired by me  
as such Solicitor as aforesaid

30            3.    That by Agreement in writing dated 4th April  
1961 (a copy whereof is exhibited herewith marked  
with the letter "A" and hereinafter referred to as  
"the said Agreement") made between the Defendant  
of the ONE PART and the Plaintiff of the OTHER PART  
the Defendant contracted and agreed to sell to the  
Plaintiff the parcels of lands therein described  
being the sections of the lands mentioned and  
referred to in the Statement of Claim endorsed on  
the Writ of Summons in the above suit.

4.    That under the said Agreement the Defendant  
undertook to obtain the consent of the Exchange  
Control Authority (the Plaintiff being a non-  
resident of the Scheduled Territories) and that

In the  
Supreme Court  
of Jamaica

—  
No. 6

Affidavit in  
support of  
Summons for  
Judgment

1st October  
1968  
(continued)

such consent was in fact obtained by the Defendant on the 5th January 1962 as per letter (a copy of which is exhibited herewith and marked with the letter "B") from the Exchange Control Section of the Ministry of Finance addressed to Messrs. Kerr-Jarrett & Company of Montego Bay who were at that date the Solicitors for the Defendant.

5. That the approval of the Saint James Parish Council to the subdivision of lands whereof the lands the subject matter of the said Agreement (hereinafter referred to as "the said lands") form part was granted by Resolution of the said Council bearing date 17th September 1963 and that such approval was duly communicated to me by letter to me dated 16th March 1964 from Peter Kerr-Jarrett a member of the said Kerr-Jarrett & Company (which is exhibited herewith and marked with the letter "C").

10

6. That by letter dated 15th May 1964 (which is exhibited herewith and marked with the letter "D") addressed to me by the said Peter Kerr-Jarrett I was informed and verily believed that the said lands were Lots 2, 2A, 2B, 3, 3A, 3B, 3C and 3D as shown on plan bearing Survey Department Examination No. 70103.

20

7. That as a result of enquiries made by me at the office of the said Kerr-Jarrett & Company (at that time and now practising under the style of Dunn, Cox & Orrett) I was informed and verily believed that the said lands were wholly or in part comprised in Certificates of Title registered in the name of the Defendant at Volume 837 Folio 92, Volume 926 Folio 387, Volume 1000 Folio 252 and Volume 1003 Folio 443 respectively of the Register Book of the Office of Titles and that subsequently (on the telephone) this information was confirmed to me by the Registrar of Titles save that I was then informed by him that two of the lots aforesaid (namely Lots 2A and 3C) were no longer comprised in Certificate of Title at Volume 1000 Folio 252 but are now comprised and registered in the name of the Defendant at Certificate of Title at Volume 1023 Folio 402 of the Register aforesaid.

30

40

8. That I have been informed by the said Peter Kerr-Jarrett and verily believe that his firm

has made an application to the Registrar of Titles to surrender the Certificates of Title aforesaid in so far as they relate to and comprise the said lands (being the Lots aforesaid) and has requested the issue of a new Certificate of Title to comprise the said lands and no other lands but that such new Certificate of Title has not yet been issued.

In the  
Supreme Court  
of Jamaica

—  
No. 6

Affidavit in  
support of  
Summons for  
Judgment

1st October  
1968

(continued)

10 9. That the instalments of purchase money and interest payable under the said Agreement up to the 15th day of September 1967 were in fact paid by the Plaintiff and received by the Defendant and payments on account of the purchase money now aggregate TWENTY-FIVE THOUSAND POUNDS.

20 10. That the payment of interest which became due under the said Agreement on 15th March 1968 was duly and legally tendered to the Defendant and acceptance thereof was refused by the Defendant by its agent the Defendant having previously intimated that by virtue of the Local Improvements Law the said Agreement was null and void having been made prior to the granting of the subdivision approval aforesaid.

11. That the Local Improvements Law having been amended by Act 36 of 1968 the said Agreement has been validated and is of full force and effect as from the date thereof.

30 12. That the Defendant has in fact not transferred the said lands or any part thereof either before the date of the coming into operation of the Act aforesaid or subsequent thereto pursuant to a contract entered into prior to such date.

13. That my firm on the 22nd day of August 1968 caused a search to be made at the Office of Titles whereby it was revealed that no transfer of the said lands or any part thereof had subsequent to the date of the said Agreement been effected and that the Caveat No. 61898 filed by my said firm on the 11th December 1967 against dealings with the said lands remained subsisting and of full effect.

40 14. That having learned that the said Act 36 of 1968 had been assented to on 19th August 1968 I enquired by telephone of the said Peter Kerr-Jarrett whether he would accept on behalf

In the  
Supreme Court  
of Jamaica

—  
No. 6

Affidavit in  
support of  
Summons for  
Judgment

1st October  
1968  
(continued)

of the Defendant payment of the balance of the purchase money interest and proportion of costs (which were at the option of the Plaintiff pre-payable at any date without penalty or interest in lieu of notice as provided by Clause 8 of the said Agreement) when he informed me that he would refer the matter to his client (the Defendant).

15. That on 23rd August 1968 I was informed on the telephone by the office of the said Dunn, Cox & Orrett that they were then sending me a copy of a letter dated 19th August 1968 addressed by William H. Sells to the said Peter Kerr-Jarrett.

10

16. That I duly received the said copy letter (exhibited herewith and marked with the letter "E") wherein the said Mr. Sells requested the said Peter Kerr-Jarrett to "instruct any of the officers employees or agents of Rose Hall not to accept payment for these properties (i.e. the said lands) by Mr. Nation his client or his agents in any form whatsoever"; also that the Defendant's interest in the said lands had been sold and the Defendant was therefore unable to transfer title to the Plaintiff.

20

17. That I have been informed and verily believe that the said William H. Sells is an officer of the Defendant company.

18. That by reason of the assertion made by the said William H. Sells that the Defendant had sold its interests in the said land my firm instituted the search aforesaid in the Office of Titles and verified that there had been no transfers of the said lands effected thereby confirming that the Defendant could not invoke the saving Clause of the amending Act aforesaid

30

19. That by letter dated 26th August 1968 (a copy whereof is exhibited herewith and marked with the letter "F") my firm wrote the said Dunn, Cox & Orrett with reference to the letter from the said William H. Sells and again offered to pay the aggregate of all monies provided under the said Agreement but stated that unless my firm was informed in writing on or before 31st August 1968 that such amounts would be accepted by the Defendant the necessary legal proceedings would be instituted in the High Court seeking an Order for

40

Specific Performance of the said Agreement.

20. That to the date hereof my firm has received no reply to the last mentioned letter.

21. That up to the date hereof no special damages have been incurred by the Plaintiff.

22. The Plaintiff has always been and is ready and willing to perform her part of the said Agreement

10 23. I have carefully considered the whole of the facts relative to this action and I verily believe that there is no defence thereto.

DATED the 1st day of October 1968.

B.C. O'B. NATION

SWORN by the said BRIAN CHARLES O'BRIEN NATION at Montego Bay in the Parish of Saint Sic Before me

(Sgd.)

J.P. Saint James

No. 7

20 AFFIDAVIT in opposition to Summons for Judgment

Suit No. C.L. 716 of 1968

In the Supreme Court of Judicature of Jamaica

In the High Court of Justice

Common Law

BETWEEN ELIZABETH LOVEJOY REEVES PLAINTIFF

A N D ROSE HALL LIMITED DEFENDANT

I, DESMOND MORRIS, being duly sworn make oath and say as follows:-

In the Supreme Court of Jamaica

No. 6

Affidavit in support of Summons for Judgment

1st October 1968

(continued)

No. 7

Affidavit in Opposition to Summons for Judgment

7th October 1968

In the  
Supreme Court  
of Jamaica

—  
No. 7

Affidavit in  
Opposition to  
Summons for  
Judgment

7th October  
1968  
(continued)

1. My true place of abode and postal address is Cottonwood, P.O. Box 186, Montego Bay in the parish of St. James, and I am a Director of Rose Hall Limited.

2. I have read the Affidavits of Douglas Ian Brandon and Brian Charles O'Brien Nation filed herein.

3. Although the Defendant entered into a purported "agreement" with the Plaintiff dated 4th April, 1961 (which document is exhibited to Mr. Nation's Affidavit marked "A"), I am advised and verily believe that such "agreement" was illegal, void and unenforceable because it related to two parcels of land which were part of the Rose Hall Estates, which lands were comprised in Certificates of Title registered in the name of the Defendant at Volumes 837, 926, 1000 and 1003 and folios 92, 387, 252 and 443 respectively in the Register Book of Titles. The "agreement" clearly defined the property to be sold by description only and not by reference to the registered Titles as the actual pieces of land to be sold were not themselves registered as separate entities, and it must have been apparent to the parties at the time that an application for subdivision would have to be made to the St. James Parish Council and that later that application, with the Parish Council's approval endorsed thereon, would have to be lodged at the Titles Office before separate Titles could be issued for the land which was the subject of the "agreement".

4. I am advised and verily believe that the said "agreement" was entered into in breach of Sections 4, 9(a) and 9(b) of the Local Improvements Law Cap. 227 and, therefore, was illegal, void and unenforceable ab initio.

5. I am further advised that the amendment to the said Law contained in the Local Improvements (Amendment) Act, Act 36 of 1968, does not make the "agreement" dated 4th April, 1961 enforceable by the parties thereto because the Defendant entered into a valid agreement to sell the said two parcels of land on the 25th May, 1968 to North Western Enterprises Ltd. for the sum of Sixty-five Thousand Pounds (£65,000.0.0.) and a Transfer, No.243094, was subsequently lodged at the Office

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of Titles to give effect to the said agreement dated 25th May, 1968. I am accordingly advised and verily believe that such Transfer has been properly effected pursuant to the meaning and intention of the said Act.

In the  
Supreme Court  
of Jamaica

—  
No. 7

Affidavit in  
Opposition to  
Summons for  
Judgment

7th October  
1968  
(continued)

10

6. I would refer to a draft Defence which has already been prepared by Counsel on behalf of the Defendant and which I exhibit herewith marked "A" for identity. I believe that such Defence is a good and complete Defence to the Plaintiff's claim herein and I accordingly ask this Honourable Court for unconditional leave to defend this action.

SWORN to at Kingston  
in the parish of Kingston  
this 7th day of October,  
1968. Before me: )

DESMOND MORRIS (Sgd.)

Wm. R. Lawrence (Sgd.)

20

Justice of the Peace  
for the parish of Kgn.

Filed by Clinton Hart & Co. of 58 Duke Street,  
Kingston, Solicitors for and on behalf of the  
Defendant herein.

No. 8

No. 8

ORDER granting Injunction

Order  
granting  
Injunction

Suit No. C.L.716 of 1968

9th October  
1968

In the Supreme Court of Judicature of Jamaica

COMMON LAW

BETWEEN ELIZABETH LOVEJOY REEVES PLAINTIFF

30

A N D ROSE HALL LIMITED DEFENDANT

IN CHAMBERS

THE 9TH DAY OF OCTOBER 1968

BEFORE MR. JUSTICE ZACCA

In the  
Supreme Court  
of Jamaica

—  
No. 8

Order  
granting  
Injunction

9th October  
1968

(continued)

UPON the Summons for injunction dated the 1st day of October 1968 coming on for hearing this day and UPON hearing Mr. David Coore of Queen's Counsel instructed by A.E. BRANDON & CO., of 45 Duke Street, Kingston, Solicitors Town Agents for Nation, Lord & DeLisser of Montego Bay, Saint James, Solicitors for the Plaintiff and Mr. R.H. Williams of Counsel instructed by Clinton Hart & Co., Solicitors for the Defendant BY CONSENT it is hereby ordered:-

10

1. THAT the Defendant, its servants and agents be restrained from selling, transferring, leasing, mortgaging or in any way disposing of the lands the subject of this suit until Judgment in this action (and until any decree for specific performance in any such Judgment shall have been complied with).
2. An Order addressed to the Registrar of Titles prohibiting him from registering any dealing under the Registration of Titles law with respect to the lands the subject of this action until further order of the Court.

20

The Lands the subjects of this suit are as follows:

Lots 2, 2A, 2B, 3, 3A, 3B, 3C and 3D forming part of the lands registered at volume 837 folio 92, volume 962 folio 387, Volume 1003 folio 443 and volume 1023 folio 402, and being the lots numbered 2, 2A, 2B, 3, 3A, 3B, 3C and 3D as shown on the deposited plan.

30

3. The Plaintiff undertakes to pay any damages occasioned by grant of the said Injunction.
4. Costs to be costs in the cause.

R E G I S T R A R.

FILED by A.E. BRANDON & CO., of 45 Duke Street, Kingston, Solicitors, Town Agents for Nation, Lord & DeLisser of Montego Bay, St. James, Solicitors for the Plaintiff herein.



No. 9

AFFIDAVIT OF HUGH CECIL HART

Suit No. C.L. 716 of 1968

In the Supreme Court of Judicature of Jamaica

In the High Court of Justice

Common Law

BETWEEN ELIZABETH LOVEJOY REEVES PLAINTIFF

A N D ROSE HALL LIMITED DEFENDANT

In the  
Supreme Court  
of Jamaica

No. 9

Affidavit in  
Opposition to  
Application  
for  
Injunction

15th October  
1968

10

I, HUGH CECIL HART, being duly sworn make  
oath and say as follows:

1. My true place of abode is 19 Queensway in the  
parish of St. Andrew and my postal address is 58  
Duke Street, Kingston. I am a Solicitor of the  
Supreme Court of Judicature of Jamaica and a  
partner of the firm of Clinton Hart & Co.,  
Solicitors for the Defendant herein.

20

2. Mr. John Rollins is the controlling force  
behind the Defendant Company and he is at present  
engaged in the development of some 6,000 acres of  
property at Rose Hall in the parish of St. James  
on which he has plans to build 5 hotels (including  
the Holiday Inn which is scheduled to have 450  
rooms and should be the largest hotel in Jamaica),  
together with holiday cottages, recreation centres,  
a new golf course, beach facilities and other  
amenities.

30

3. After it had become apparent that the  
purported agreement entered into between the  
Plaintiff and the Defendant and dated 4th April,  
1961 contravened the Local Improvements Law Cap.  
227, and was therefore void ab initio, Mr. John  
Rollins and the husband of the Plaintiff, Mr.  
Rosser Reeves, entered into an agreement for the  
sale of the Plaintiff's "position" in the  
2 parcels of land at Rose Hall, which are the  
subject matter of the present suit, to the  
Defendant for the sum of \$365,000 U.S., and I  
attach herewith marked "HCH 1" for identity a

In the  
Supreme Court  
of Jamaica

—  
No. 9

Affidavit in  
Opposition to  
Application  
for  
Injunction

15th October  
1968  
(continued)

copy of that draft agreement which was prepared by me. This draft agreement was submitted to Accountants in the USA for their opinion on the tax position on behalf of Mr. Reeves, and I exhibit herewith marked "HCH 2" for identity, copy of a letter written by Price Waterhouse & Co. dated 29th January, 1968.

4. I also exhibit herewith marked "HCH 3" for identity a copy of the letter dated 31st January, 1968 from my firm to the Exchange Control Section of the Bank of Jamaica, with the seal of that Bank indicating that permission had been granted endorsed thereon and dated 22nd April, 1968. The delay is explained by the fact that certain correspondence took place between the 31st January and the 22nd April, 1968 between myself and the Bank of Jamaica before the Bank was satisfied that approval could be given.

10

5. The draft agreement was sent to Messrs. Nation, Lord & DeLisser, the Solicitors for the Plaintiff, by letter dated 6th March, 1968 (copy exhibited herewith marked "HCH 4" for identity) and I also exhibit herewith marked "HCH 5" for identity, their reply dated 19th March, 1968, together with my own reply to that letter dated 22nd March, 1968 (exhibited herewith marked "HCH 6" for identity).

20

6. Sometime in or around March 1968, I was in New York and had a discussion with Mr. Rosser Reeves and other parties concerning the matter and, so far as I was concerned, I understood that Mr. Reeves had definitely agreed to the proposed contract. When I received Mr. Reeves' letter dated April 10, 1968 (exhibited herewith marked "HCH 7" for identity) addressed to Mr. William Sells (who is Mr. John Rollins' personal Manager), I was a little surprised and replied to Mr. Reeves by letter dated 17th April, 1968 (copy of which is exhibited herewith marked "HCH 8" for identity) stating that the Defendant regarded itself as bound by the new agreement, although other prospective purchasers were interested and the Defendant wished to finalise the position. A week later, as soon as Exchange Control Approval was obtained, I sent a copy thereof to the Plaintiff's Solicitors by letter dated 24th April, 1968 (copy exhibited herewith marked "HCH 9" for identity).

30

40

7. Shortly after this, I learned that the Plaintiff did not intend to go ahead with the new agreement and, accordingly, the Defendant felt itself free to sell the property to another purchaser, especially as my client had been informed that the Plaintiff and/or her husband were intending to deliberately block the Defendant's plan to develop the area as a resort.

In the  
Supreme Court  
of Jamaica

—  
No. 9

Affidavit in  
Opposition to  
Application  
for  
Injunction

15th October  
1968

(continued)

10 8. Sometime during May 1968, I received instructions from Mr. John Rollins to the effect that he had arranged to sell the property to a Mr. Marvin Orleans of Philadelphia, U.S.A., that Mr. Orleans wished me to act for him and to form a Company in Jamaica, into whose name the property could be put. I accordingly put in motion the machinery for incorporating North Western Enterprises Limited and, at the same time, I prepared an agreement for the sale of the said two lots at Rose Hall from Rose Hall Limited to North Western Enterprises Limited, and inserted in that agreement as special condition 2, a clause protecting Rose Hall Limited, as to the future user of the land by North Western Enterprises Limited. I sent this agreement to Mr. John Rollins for him to sign on behalf of Rose Hall Limited and, in due course, he returned it to me duly signed by him with a letter dated 14th May, 1968 (which is exhibited herewith marked "HCH 10" for identity).  
20 In the meantime, the work relating to the incorporation of North Western Enterprises Limited had been proceeding, and it was duly registered on the 28th May, 1968, at the Companies Registry,, with the registered office to be at 30 Duke Street, Kingston, and with the Bank of Nova Scotia Trust Company of Jamaica Ltd. to act as controllers of the Company for Mr. Orleans.

30 9. I was in the United Kingdom from the 14th June to the 22nd June, 1968 and when I returned to my office on the 24th June Miss Yvonne Chin, my Assistant Secretary, had returned to work for me that same day. I was extremely busy at the time and on Wednesday 26th June I remember getting very annoyed when I discovered that the said agreement between Rose Hall Limited and North Western Enterprises Limited had not been signed and stamped. I instructed Miss Yvonne Chin, my Assistant Secretary, to attend to the matter  
40

In the  
Supreme Court  
of Jamaica

—  
No. 9

Affidavit in  
Opposition to  
Application  
for Injunction

15th October  
1968

(continued)

immediately and she must have sent the document down to Mrs. Ella Fraser because I remember that shortly after giving those instructions I received a telephone call from Mrs. Fraser asking me about the Directors of the Company. I instructed Mrs. Fraser to hold the necessary Subscribers' Meeting for the appointment of the Directors immediately, to appoint herself and Mr. C.C. Adams as Directors, and to then sign the agreement and send it back to my office.

10

10. Until these present proceedings arose, I did not know that the agreement was dated the 25th May, 1968. Miss Chin did not speak to me about it and I forgot to check it.

11. In due course, a Transfer of Land, Transfer No. 243094, pursuant to the agreement, was signed by all the necessary parties, dated 12th September, 1968 and lodged in the Office of Titles on the 13th September, 1968 with the registered office of the purchaser inadvertently inserted therein as "58 Duke Street," instead of "30 Duke Street".

20

12. I exhibit herewith marked "HCH 11" for identity, copy of a letter written by me to the Bank of Jamaica dated 10th October, 1968 and a copy of their reply dated (exhibited herewith marked "HCH 12" for identity). I verily believe that the said agreement which bears the date 25th May, 1968 is dated in error and and in truth and in fact it was completed by the signature of the purchaser's agent on the 26th June, 1968.

30

SWORN to at Kingston  
in the parish of Kingston }  
this 15th day of October, } H. C. HART (Sgd.)  
1968. Before me: }

Oscar B. Shim (Sgd.)

Justice of the Peace  
for the parish of Kgn.  
Filed by Clinton Hart & Co. of 58 Duke Street,  
Kingston, Solicitors for and on behalf of the  
Defendant herein.

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No. 10

JUDGMENT

Suit No. C.L. 716 of 1968

In the Supreme Court of Judicature of Jamaica

COMMON LAW

BETWEEN ELIZABETH LOVEJOY REEVES PLAINTIFF

A N D ROSE HALL LIMITED DEFENDANT

IN CHAMBERS

BEFORE MR. JUSTICE ZACCA

10 THE 9TH DAY OF OCTOBER 1968  
THE 16TH DAY OF OCTOBER 1968  
AND THE 24TH DAY OF OCTOBER 1968

UPON the application by the Plaintiff by  
Summons dated the 2nd day of October 1968 herein  
for Judgment coming on for hearing on the 9th,  
16th and 24th October 1968 and UPON hearing  
Mr. DAVID COORE of Counsel instructed by A.E.  
BRANDON & CO. of 45 Duke Street, Kingston,  
20 Solicitors, Town Agents for Nation, Lord &  
DeLisser of Montego Bay, Saint James, Solicitors  
for the Plaintiff and MR. R. H. WILLIAMS of  
Counsel instructed by Clinton Hart & Co. of  
58 Duke Street, Kingston, Solicitors for the  
Defendant and UPON reading the Affidavits filed  
herein on behalf of the Plaintiff and the  
Defendant IT IS HEREBY ORDERED:

30 1. THAT there be Judgment for the Plaintiff with  
Certificate for Counsel in terms of paragraph 1 of  
the Summons for Judgment pursuant to section 86A  
of the Civil Procedure Code chapter 177 of the  
Revised Laws for specific performance of the  
agreement in the Writ in this action mentioned  
in the terms of the minutes annexed thereto as  
follows:-

Declaration that the agreement dated the 4th  
day of April, 1961 in the Writ of Summons mentioned  
ought to be specifically performed and carried into  
execution.

In the  
Supreme Court  
of Jamaica

No.10

Judgment

24th October  
1968

In the  
Supreme Court  
of Jamaica

—  
No.10

Judgment

24th October  
1968  
(continued)

LET THE FOLLOWING INQUIRY BE MADE:-

A. An inquiry what damages have been sustained by the Plaintiff by reason of the Defendant not having specifically performed the said agreement.

B. An order in the following terms:-

1. A declaration that the agreement dated the 4th day of April 1961 in the Writ of Summons mentioned ought to be specifically performed and carried into execution.

2. That an account be taken by the Registrar of the Supreme Court of what is due (if any) to the Defendant for the balance of purchase money, interest and costs of transfer. The Registrar of the Supreme Court shall notify the parties (by registered post) of the date and time of the taking of the said account, such notice to be posted at least 7 days before the date fixed for taking of such account (to such addresses as the Court may order). 10

3. That the Plaintiff do tender the sum so found by the Registrar to be due by her to the Defendant at the office of the Registrar of the Supreme Court within 21 days of the date of the taking of the account in exchange for which the Defendant shall tender to the Plaintiff a stamped executed and registrable transfer in favour of the Plaintiff or her nominee (and all deeds Duplicate Certificates of Title and writings relating thereto exclusively) of the lands the subject of this action being lots 2, 2A, 2B, 3, 3A, 3B, 3C and 3D referred to in the Amended Statement of Claim and the Defendant shall thereupon deliver vacant possession of the said lands to the Plaintiff. The Plaintiff shall inform the Defendant of the precise date and time at which the said exchange shall take place by written notice sent to the Defendant (at an address to be specified in the order herein) by registered post at least three days before the date fixed for the said exchange. 20 30 40

4. That the Plaintiff shall be at liberty to deduct (on the date fixed for the tender) the taxed or agreed costs of this suit from the amount (if any) found to be due to the Plaintiff under paragraph 2 herein.

5. If the Defendant shall fail neglect or refuse to tender an executed and registrable transfer to the Plaintiff at the time and date specified by the order herein the Plaintiff shall be at liberty within 7 days thereafter to tender a transfer to the Registrar of the Supreme Court (by virtue of Section 650 of the Judicature Civil Procedure Code) Law a transfer of the said lands and the same shall be executed by a Judge of the Supreme Court and returned to the Plaintiff and the same shall have been executed by the Defendant. The Plaintiff shall in exchange for the said transfer pay the amount due to the Defendant (after deduction of the amount specified in paragraph 3 hereof and half the stamp and registration fees advanced by the Plaintiff and Solicitors costs of same into Court).

10

6. That an injunction be granted restraining the Defendant, its servants and agents from selling, transferring, leasing, mortgaging or in any way disposing of the lands the subject of this action (until the terms of the order sought herein shall have been complied with or completed).

20

7. That the Registrar of Titles be prohibited from registering any dealing under the Registration of Titles Law with respect to the lands the subject of this action until the terms of the order made on this motion shall have been complied with.

8. That the Defendant do pay the costs of and incident to this suit.

30

9. Further or other relief.

10. And the parties are to be at liberty to apply.

(Sgd.) B. K. MONTEITH

Ag. Registrar.

FILED by A.E. BRANDON & CO., of 45 Duke Street, Kingston, Solicitors Town Agents for Nation, Lord & DeLisser of Montego Bay, Saint James, Solicitors for the Plaintiff herein.

In the  
Supreme Court  
of Jamaica

—  
No.10

Judgment

24th October  
1968

(continued)

In the  
Supreme Court  
of Jamaica

No. 11

REASONS FOR JUDGMENT

(As agreed with the Honourable Mr. Justice Zacca)

No.11  
Reasons for  
Judgment  
24th October  
1968

SUIT NO. C.L. 716 of 1968

BETWEEN ELIZABETH LOVEJOY REEVES PLAINTIFF

A N D ROSE HALL LIMITED DEFENDANT

IN CHAMBERS

THE 24TH OCTOBER, 1968

BEFORE MR. JUSTICE ZACCA

There was an Agreement of 4th April, 1961 between Reeves and Rose Hall Limited. That Agreement when made was illegal as a result of the Local Improvements Act. There was also, on the 25th May, 1968, another Contract and an executed Transfer in relation thereto was lodged. These facts are not in dispute.

10

Question of fact - I shall make no findings on this at this stage. I make no findings on exchange control problems either. The law on that point is complicated. If I had been ordered to give judgment on that point and the facts I would not have done so on a Summons such as this.

20

Section 3(2) - It would be easy to say that this was an arguable matter and leave it to another Judge to decide the issue. I intend to make my decision on the arguments put before me with respect to Section 3(2). I shall interpret it. In effect it's the only point the defence wished to take on asking for leave to defend. The main defence, the only one really, is that a Transfer has been executed, lodged, effected and the Section 3(2) does not avail the Plaintiff.

30

Section 9A(1) - the new section does validate the 1961 Agreement. Dealing with Mr. Williams submissions ... If I accede to his arguments "transfer effected" means only executed and lodged, then the legislature would have wasted its time passing the new law. What would Section 9A(1)



10 be for if the Vendor could merely make another sale  
 and lodge a transfer. The purchaser may not be  
 aware of it and even a caveat would have been no  
 use to a purchaser. That does not mean that Mr.  
 Coore's arguments are correct. I have to consider  
 the purpose and the intention of the legislature in  
 passing the law. Mr. Coore says that the Transfer  
 has to be registered before it is effected. For  
 the purposes of a Summons for Summary judgment I  
 must be satisfied that there is no merit in the  
 defence. I am satisfied that the only possible  
 interpretation of Section 3(2) is that it means  
 that a transfer is effected when it is registered.  
 I have no doubt about it and in view of this the  
 defence would have no merit in law. The intention  
 of the section and the interpretation of "transfer  
 effected" means registered, that is, when a  
 transfer is registered and the estate passes and  
 the legislature intended to protect cases where  
 20 the estate had passed.

I substitute "amended Statement of Claim" for  
 the words "Writ of Summons" in the Minutes to the  
 Summons for Judgment.

Order in terms of paragraph 1 of the Summons  
 for Judgment. Order for specific performance of  
 the Contract with Certificate for Counsel.

Application for stay of execution for 6 weeks  
 granted.

Costs to the Plaintiff on the Summons for  
 Injunction and Certificate for Counsel.

BY THE COURT.

In the  
 Supreme Court  
 of Jamaica

—  
 No.11

Reasons for  
 Judgment

24th October  
 1968

(continued)

In the  
Supreme Court  
of Jamaica

No. 12

JUDGE'S NOTES

No.12  
Judge's Notes

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN THE HIGH COURT OF JUSTICE  
C.L. 716/68.

ELIZABETH LOVEJOY REEVES

Vs.

ROSE HALL LTD.

Mr. D. Coore for Plaintiff instructed by Messrs.  
Nation Lord & DeLisser and Mr. Douglas Brandon  
Town Agents. 10

Mr. R. Williams instructed by Clinton Hart & Co.  
for defendant.

Mr. Coore submits that he will deal with Summons  
for Judgment first.

Statement of Claim.

Affidavit of Mr. Nation. Exhibits.

Law 36 of 1968.

In Affidavit on 22nd August, 1968 S.3. 9A(1)  
Subsection (2). 20

Affidavit of Mr. Desmond Morris.

No Transfer has yet been effected.

Notice to produce contract by defendant with  
North Western Enterprise Ltd.

(Contract produced by Defendant)

No. 13

EVIDENCE OF DESMOND MORRISDESMOND MORRIS (SWORN)XXD. MR. COOREIn the  
Supreme Court  
of JamaicaDefendant's  
Evidence

No.13

Desmond  
MorrisCross-  
Examination

10 I have been a Director of Rose Hall since 1966. I am familiar with the share structure of Rose Hall Ltd. Rollins Ja. Ltd. is the majority shareholder of Rose Hall Ltd. I think that Mr. John Rollins is the major shareholder in Rollins Ja. Ltd. Mr. Rollins lives in the USA. Rose Hall Ltd. is a Company incorporated in Cayman Island. I think that Rollins Ja. Ltd. is incorporated in Delaware, USA.

I don't know if Exchange Control permission was granted for the sale to North Western Enterprise Ltd. Mr. Rollins would know. Clinton Hart & Co. has handled the transactions of 5th May, 1968.

20 I would find out if Exchange Control permission granted. I know nothing about the sale. It was handled by Mr. Rollins himself. I know that the agreement for sale was made but I was not a party to it. I only knew of this one agreement for sale. It is the agreement which I have produced which by copy is relying on. It is the only one I knew of.

30 I know nothing about the North Western Enterprise Ltd. Company. I know it exists. I do not know where the Registered Office of this Company is. I do not know who the Directors are and if there are any Directors. I was advised by Mr. Rollins that it was a valid agreement. I could not know this Company had its Registered Office at 30 Duke Street. I think that I have seen the transfer which has been lodged. I have it here. The transfer discloses the Company was having its registered office at 58 Duke Street. Clinton Hart & Co. have their Registered Office at 58 Duke Street. Solicitors for Rose Hall Ltd. It may have changed its office from 30 Duke Street to 58 Duke Street.

It would surprise me to know that North Western Enterprise Ltd. was incorporated on 28th

In the  
Supreme Court  
of Jamaica

Defendant's  
Evidence

No.13

Desmond  
Morris

Cross-  
Examination  
(continued)

May, 1968. It is because the agreement is dated 25th May, 1968. I would not expect Mr. Rollins to make an agreement with a Non-existent Company.

Deposit of £1,000 on signing of agreement. I don't know if the £1,000 has been paid. I have never seen the cheque. I don't know if the cheque was received. I do not know if the Mortgage has been affected. The sale is an important transaction.

It did not come up at any Directors' meeting that I was present at. I have never seen any minute of any Directors' meeting at which this transaction came up. As a Director, I know that this land had been contracted to be sold to Mrs. Reeves from 1961. I knew that Plaintiff was in possession of the land. There are about five Directors of Rose Hall Ltd. - Mr. & Mrs. Rollins, Mr. Sells, myself and one of Mr. Rollins' sons. I do not know what the share capital of North Western Enterprise Ltd. is.

10

Not RE XD by Mr. Williams

20

By consent.

No.14

Proceedings

No. 14

PROCEEDINGS

Affidavit of Nigel George Leigh Lord served on Defendant and admitted.

Mr. Williams applies to have matter adjourned for seven days. Adjourned to 16/10/68 on terms.

By Consent Injunction granted in terms of Summons dated 1st October, 1968 or until further Order. Plaintiff undertaking to pay any damage occurred by the grant of the said injunction. Cost of adjournment costs in the cause.

30

16/10/68

Mr. Williams submits that three affidavits served and filed.

Deponents are here for Cross-Examination.

Mr. Coore states that he wishes to ask Deponents some questions.

No. 15

EVIDENCE OF HUGH HARTHUGH HART (SWORN)XXD MR. COOREIn the  
Supreme Court  
of JamaicaDefendant's  
Evidence

No.15

Hugh Hart

Cross-  
examination

It became apparent that the purported agreement of 4th April, 1961 was void Ab initio either latter part of 1967 or early this year 1968.

10       \$365,000.00 USA Dollars is about £150,000. This is about three times the price Mrs. Reeves' contract called upon her to pay. In 1967 Mr. Rollins was prepared to pay £150,000 for the land. When Mr. Rollins was having discussions with Mrs. Reeves about the sale of the land, Mr. Rollins knew that Mrs. Reeves could not enforce her contract in law. Mr. Rollins never discussed with me the reasons for him doing this. Mr. Rollins was very anxious to get back this land into Rose Hall. It was sold at a time when he did not own Rose Hall. The discussion about the sale back to  
20       Rose Hall fell through.

Rose Hall Ltd. was entitled to sell the land at any time because the agreement with Mrs. Reeves was bad. Rose Hall was not morally bound by the agreement with Mr. Reeves for the resale. Rose Hall was buying something which it could have got for nothing. I am the Solicitor for Rose Hall Ltd.

30       I have some experience in land transactions. I do not know a great deal about Rose Hall property. I know what developments are planned. This land butts and bounds on the sea front. It was not my personal view that the price of £150,000 was a fair price. It was too high for this land.

40       Mr. Rollins made an agreement to sell this same land to Mr. Orleans for £65,000. The land which Rose Hall Ltd. was prepared to buy for £150,000 it proceeded to sell for £65,000. It appears to me that Rose Hall realised that the value of the land was not £150,000. They always realised it was not worth £150,000. If the Reeves' had sold the land for £150,000, Rose Hall would have sold it to Mr. Orleans for £65,000. Mr. Rollins is not a philanthropist. Rose Hall Ltd. would have lost £85,000

In the  
Supreme Court  
of Jamaica

Defendant's  
Evidence

No.15

Hugh Hart

Cross-  
Examination  
(continued)

and not have the land. By leaving the original contract, Rose Hall Ltd. would have lost nothing. They would have got the purchase price of £50,000. When the agreement with Mr. Orleans was taking place, I knew that the Government was contemplating amending the Local Improvement Law. This transaction with Mr. Orleans was not done with the view of circumventing any amending legislation. I have never got any instructions directly from Mr. Orleans. I have never spoken to Mr. Orleans. I have never seen Mr. Orleans. I do not know if he exists, except from what Mr. Rollins and Mr. Sells have told me. I am not a philanthropist. I expected to be paid by Mr. Orleans. I have not yet sent him a bill. I believe that Mr. Orleans' address is in my office. I could get it from Mr. Rollins or Mr. Sells. Mr. Orleans is my client. I only knew this through Mr. Rollins and Mr. Sells. If Mr. Orleans said he knew nothing about this, I would look to Mr. Rollins. Mr. Sells is Mr. Rollins' General Manager of Jamaica Rose Hall operations. The share capital of the Company was £100. None of it has yet been subscribed. As far as I know this new Company has no assets. Mr. Sells gave me instructions as to the terms of contract between Mr. Rollins and the new company. Mr. Sells said he would take the contract and show it to Mr. Rollins and then to Mr. Orleans and have it signed and sent back. Mr. Sells was in a sense acting for both parties. I was also acting for both parties.

10

20

30

I gather that Mr. Orleans is a friend of Mr. Rollins. The agreement was drafted sometime in May. It was not true at that time the Company was incorporated. The intention was that by the time the agreement came back from the States the Company would have been incorporated. The intention is that by the time the date was filled in and the document signed the Company would have been incorporated. The deposit of £1,000 has not been paid to my knowledge. It has not been paid through me.

40

The Certificate of Title was to be issued in the name of the vendor. No transfer to the purchaser is to take place until the vendor has the Certificate of Title in his name. The vendor does not yet have the Certificate of Title in hand.

The transfer is also to take place when £24,000 is paid at a Mortgage Executed for the balance of £40,000.

As far as I learned none of these conditions have yet been taken place. A transfer to North Western has been filed with the Registrar of Titles. Only the fact of the existence of caveats have prevented the transfer.

10 An attempt is being made to register the land to North Western Co. although the Co. has not done anything to comply with the condition. The whole purpose of this transaction from start to finish is not to try and evade the operation of Law 36 of 1968.

20 If there is a caveat on land and you apply to register a Mortgage, this would be sufficient for the Registrar to warn the Mortgagor. Under the terms of this contract the application to register the Mortgage could not be made until the transfer to the purchaser. The Mortgage and transfer would be lodged together. The reason for the transfer being lodged was to warn the caveator.

If the caveat lapsed, transfer of £65,000 property would have been transferred to a £100 company without one penny being paid.

30 I would have held the Title. The only person I have dealt with with respect to North Western Enterprise Ltd. Mr. Rollins and his employee Mr. Sells. The agreement was sent back to me by letter dated 14th May.

This agreement was signed by Mr. Rollins. I did not see the agreement immediately it came back. I don't recall seeing it until after I came back after the 22nd June.

Mr. Rollins did not purport to sign it as a Director of Rose Hall Ltd. I don't really know of my own knowledge what had happened to the document between the 14th May and 22nd June, 1968.

40 It was on 26th June that I discovered that the agreement had not been signed or stamped. Miss Chin had just come back and there was a number of items in her basket for attention. I was

In the  
Supreme Court  
of Jamaica

Defendant's  
Evidence

No.15

Hugh Hart

Cross-  
Examination  
(continued)

In the  
Supreme Court  
of Jamaica

—  
Defendant's  
Evidence

—  
No.15

Hugh Hart

Cross-  
Examination  
(continued)

dealing with matters in the course of office routine when it came to my attention. I saw the document on the 26th June. I told her to get it signed and stamped immediately.

I got a call from Mrs. Fraser saying that there were no Directors of the Co. I instructed her to hold the necessary Subscribers' meeting and appoint herself and Mr. Adams as Directors. It was my idea that both of them should be Directors. I did not see the agreement when it came back from Mrs. Fraser. I know that a defence and Counter-claim was drafted.

10

I do not know how it is that this serious error of the date in the contract of sale with Mrs. Reeves was not discovered only until it was brought to the attention that the Co. was not incorporated until the 28th May. It was only brought to my notice after these proceedings started. The document was stamped on the 26th June.

20

Miss Chin says in her affidavit that she puts on the date on the same day it was stamped. She had been with me from about 18 months. She was not accustomed to doing these kind of matter. She is used to getting documents signed and giving them out for stamping.

A document should be stamped within fourteen days. By choosing the random date of 25th May she automatically made the document liable for a penalty. I do not instruct my staff to put fictitious dates on documents nor to occur penalties. It was done in this case. I think it was a mistake.

30

North Western Enterprise Ltd. was buying the property as agent of Mr. Orleans. Mr. Orleans is neither a subscriber or Director. My understanding is that North Western Enterprise holds the property for Mr. Orleans. The subscribers and Directors are purely nominees. The Exchange Control Permission was granted for the sale to North Western Ltd. I have never told the Exchange Control Authority that North Western Enterprise is merely holding for Mr. Orleans. I have not applied for permission under the land Utilization Law.

40



It is my understanding that on 17th April, Rose Hall wanted to take the property from the eyes of other interested parties.

Rose Hall wanted to say definitely that the land was not for sale. Immediately after this, Rose Hall proceeded to sell to Mr. Orleans. Rose Hall Ltd. would be prepared to sell the land to any person who would use the land in the way in which they wanted it utilised.

10 Not questioned by Mr. Williams

No. 16

EVIDENCE OF YVONNE MARIA CHIN

YVONNE MARIA CHIN (SWORN)

XXD. MR. COORE

20 I am familiar with the contents of my affidavit. On the morning of June 26, 1968, I dated the document 25th May, 1968. I had been working with Clinton Hart & Co., from October 1965 until about April 1968. I left and came back in June 1968. Prior to June 1968 I usually put the date on the document when it comes back after it is signed by both parties.

30 I understand my business to give the document the date on or after it is immediately signed by both parties that is what I generally do. This was not what I did in this case. This case was a departure from my normal practice. In this case I back-dated the document. This was not my normal practice. I know that a document is to be stamped within fourteen days of its date. In this case I back-dated the document to a date which would mean a penalty. I did not think of any penalty at that time. I picked the date 25th May. It is not random date I chose. I checked on the file to see what date the letter arrived from Mr. Rollins.

40 I did not assume that the document had been signed by the purchaser by the 25th May. I normally date the document when it comes back. I sent it to Mrs. Fraser to be signed. It came back on the same date the 26th June, 1968. That was the date I

In the  
Supreme Court  
of Jamaica

Defendant's  
Evidence

No.15

Hugh Hart

Cross-  
Examination  
(continued)

No.16

Yvonne Maria  
Chin

Cross-  
Examination

In the  
Supreme Court  
of Jamaica

Defendant's  
Evidence

No.16

Yvonne Maria  
Chin

Cross-  
Examination  
(continued)

No.17

Yvonne Maria  
Chin

Examination

would have put on it if I had followed the usual practice.

Nothing caused me to depart from my usual practice. I did not date the document before I sent it to Mrs. Fraser.

There is no one who can corroborate me that I dated the document in June. Mr. Hart saw the document before I sent it to Mrs. Fraser.

No. 17

EVIDENCE OF YVONNE MARIA CHIN

10

XD. MR. WILLIAMS

On 26th June, 1968 Mr. Hart got angry. I was a bit nervous and I telephoned Mrs. Fraser and sent it off. I put on the date on some occasion when a document is received from abroad. This is what I was doing on this occasion. Looking back on it now it was wrong.

TO COURT: I would not put on the date before the document is signed by both parties.

No.18

Ella Frazer

Cross-  
Examination

No. 18

EVIDENCE OF ELLA FRAZER

20

ELLA FRAZER (SWORN)

XXD. MR. COORE

The photostat which I exhibited with an affidavit is a photostat of the original.

On June 26, 1968 I looked up the file on North Western Enterprise. The file consisted of two letters. The first letter sent was the memorandum of Article for signature and this letter was dated 21st May. The second letter was a letter from me sending back the memorandum of Article. This letter was dated 22nd May, 1968.

30

I knew nothing about this Company. I was signing as a director. I did not have any idea where the £65,000 was to come from. As far as I knew North Western Ltd. had no funds. As far as I knew it does not have any funds now. I just read through a part of the document before I signed it. I knew it was a document for the sale of land.

In the  
Supreme Court  
of Jamaica

Defendant's  
Evidence

No.18

Ella Frazer  
Cross-  
Examination  
(continued)

10 It was not of any interest to me. I read it but I did not note the deposit. It was a binding agreement of a Company of which I was a Director. I was acting on instructions of Clinton Hart & Co. As a Director of the Company I don't know where the £65,000 is coming from. I would have signed anything written within reason which they wanted me to sign.

I noticed that the document was undated. I noticed that the special conditions attached to the contract.

20 I also assumed that it would be dated when it was stamped. It would surprise me to know that it was back dated for one month.

I would not have considered it right to sign a document which I knew was going to be back dated to a date which was false. I assumed that it would be dated the same date I signed it. I was asked to sign the document and return it. That was my only interest on the matter. The document I signed is a pro formas which I got from Messrs. Clinton Hart & Co. I filled it in and had it signed.

30 I held the meeting and signed it. I was carrying out instructions Clinton Hart & Co. sent the form. I knew that I signed the contract at least one month after I signed the memorandum of the Articles of Association. My memory as to the date I signed the Contract was from the fact that I signed the form of the meeting on 26th June. I got the date of 26th June from the date on the document.

40 I dated the form 26th June, 1968 and then signed the agreement as a Director. I typed it on the 26th June, 1968.

Mr. Gammage went on leave on the 1st June, 1968 and he went to England. He was away for three weeks.

In the  
Supreme Court  
of Jamaica

No. 19

EVIDENCE OF ELLA FRAZER

Defendant's  
Evidence

ReXD. MR. WILLIAMS

No.19  
Ella Frazer  
Re-  
examination

I have subscribed to memorandums of about 30 or 40 Companies. This was not the only Co. I had been appointed a Director. It happened many times before. I was in no doubt that I signed this document on 26th June, 1968.

No.20

No. 20

Plaintiff's  
Submissions

PLAINTIFF'S SUBMISSIONS

10

Mr. Coore further submits:-

In the admitted facts the only way in which the defendant can avoid an order for specific performance is if the defendant can bring itself within the exempting provisions of Section 3 Sub-section (2) of Act 36 of 1968. It is conceded that there was an agreement for sale in April 1961.

It is conceded that Plaintiff has fulfilled all her obligations to date under the agreement. It is conceded that subdivision approval has since been granted. There is evidence that the Plaintiff has offered to pay immediately the remainder of the purchase money. And that defendant has refused it on the grounds that he is not bound by the contract.

20

The effect of Section 3 Sub-section 1 of 36 of 1968 therefore is to validate the contract made in 1961. Up to that point therefore there cannot be any answer to the Plaintiff's claim. The sole question is whether the defendant has shown any arguable defence arising out of Section 3 Sub-Section (2). The Plaintiff is asking for Summary Judgment.

30

Summary Judgment should not be granted unless the case is very clear. It is also true that this is the first case in which Act 36 of 1968 is being adjudicated on and it may be argued that the matter should be sent to trial and not argued summarily. The whole point is whether there is clearly no defence.

Con.v. Casey 1949 1K.B. 474 at p.481. Section 3(2) cannot apply because there was no valid agreement before the day of enactment.

In the  
Supreme Court  
of Jamaica

Newhouse v. Sevsolid (G.Britain) Ltd. 1953 1 A.E.R.708. The contract was made before the Company came into existence on the face of it this Contract was a nullity. If it is not so one has to consider whether the other provision of Sub-Section 3 has been satisfied.

No.20  
Plaintiff's  
Submissions  
(continued)

10 Prima Facie the agreement was made on the 25th May and in the absence of any credible evidence to the contrary that is the position. There is evidence given at the last moment by Mr. Hart and the two ladies to the effect that the contract was not signed until 26th June but was wrongly dated for the 25th May. Orleans resident in Philadelphia. This is a transaction for which they should have got Exchange Control permission.

20 Plaintiff is entitled to Summary Judgment.  
Plaintiff is being deprived of land that belongs to her and which she can sell at a very high price.

Plaintiff ought to be given order on Summary Judgment.

Civil Procedure Code.

Amendment. (S. 86 A.)

No. 21

No.21

DEFENDANT'S SUBMISSIONS

Defendant's  
Submissions

Mr. Williams submits.

30 This is a very avaricious (avaricious?) and unusual procedure on the part of Plaintiff. S 86 A. is equivalent to Order 14A under English Rules prior to their recent amendment.

Order 14 - Summary Judgment.

S. 79 (1) Civil Procedure Code as amended.

Equivalent to Order 14 R.l.A.

In the  
Supreme Court  
of Jamaica

—  
No.21

Defendant's  
Submissions  
(continued)

Whether there is a triable issue it does not matter if the view is that the defendant will not succeed. Leave should be given to defend where a difficult question of law is involved.

There is a triable issue and arguable defence both on the questions of fact and law.

Question of Fact:

As to date of agreement all the sworn evidence is one way and it is that the agreement was signed on 26th June, 1968. Not to decide question of fact but whether question of fact has been raised and should be dealt with by Trial Court.

10

Question of Law:

A word has been used in an Act of Parliament which is not a conveyancing word nor a term of art. It is a word, the meaning of which in this context is most uncertain. The meaning of the word "effected" and the proper construction of S.3(2). Transfer was made pursuant to contract of sale alleged dated 26th June, 1968.

20

The word "effected" is used in relation to conveyance of land.

Conveyance of land effected means delivery to other party of conveyance.

Adams on Land Transfer Act, 1952 (New Zealand), at Pg.63. S.41.

A transfer gives a purchaser an equitable interest. Interest of sub-purchaser should take preference over interest of original purchaser. Original purchaser would be entitled back to his deposit or purchase money paid.

30

Adjourned to 24/10/68.

24/10/68

Mr. Williams continues submissions:

The word "effected" not judicially interpreted in England or here in Jamaica.

Dealing with a new law.

V 2 words and Phrases judicially defined by Roland Burroughs at page 174 Bellingham v Bly. 1915 34. N.Z.L.R. 538.

Nigio v Wilson 1924 N.Z.L.R. 834.

If a contract is effected on the making of the contract, a transfer is effected if the transfer is executed. A title in equity is created.

This is arguable. May be wrong or right.

10 An unregistered transfer creates an interest in Equity.

A transfer effected when it is made although creating an interest in Equity.

This is not the appropriate time for a final view to be made on a new word.

1966 Supplement Pg. 49.

Gladstone v. Catena 1948 Ont. R. 182.

Transfer effected does not mean that a transfer has to be registered.

20 Legislature could have used the words transfer registered if this was the intention.

The word "effected" is not a complete finality.

Exchange control Law 33, 1957 North Western is not resident outside Jamaica. If wrong on all submissions and leave to defend refused what Judgment could be given to Plaintiff.

What would be proper remedy, specific performance or damages.

30 (a) All the defendant has to show is that there is a triable issue. That there is prima facie on arguable defence. For Plaintiff to succeed the case must be very clear.

(b) On the question of fact there is a clearly triable issue as to whether the contract was made on

In the  
Supreme Court  
of Jamaica

                      
No.21

Defendant's  
Submissions  
(continued)

In the  
Supreme Court  
of Jamaica

—  
No.21

Defendant's  
Submissions  
(continued)

25th May or 26th June.

(c) On the question of law the defendant ought to be given leave to defend because:-

(1) this is a new law having most unusually a retroactively effect and has not yet been the subject of any judicial decision.

(2) The word "effected" has not been judicially interpreted in England or West Indies and the judicial interpretation in N.Z. and Canada appears to favour the defendant's argument. 10

Cases involving construction of a statute can only be the basis of Summary Judgment in most exceptional cases e.g. Rent Restriction Law.

(3) Adams on land Transfer Act shows that the unregistered Transfer does create interest in land under the Registration of Titles Law which is enforceable in Equity and the question of whether the word "effected" in this context refers to unregistered transfer or registered transfer was an open one having regard to the cases cited. 20

(4) If the legislature had intended that sub-section 2 of Section 3 should refer only to registered transfer it would have said so.

(5) It is unlikely that the word "effected" was used to mean "delivering" in the case of a conveyance and registration in the case of a transfer. Having regard to the cases cited where "effected" has not been construed to mean the final achievement of a purpose.

(6) Sub-Section 2 was meant to protect innocent third parties such as North Western who signed a contract at some time between 1st January 1954 and 22nd August, 1968 and have a transfer, although unregistered, made out to them. 30

(7) Even if the defendant is unsuccessful as to the true meaning of the word "effected", it is at this stage an open question as to whether specific performance or damage would be the proper remedy. This question could only be resolved at the trial. For these reasons leave to defendant should be granted to defend this action in this novel but highly important case. 40



PLAINTIFF'S SUBMISSIONS IN REPLYIn the  
Supreme Court  
of JamaicaNo.22MR. COORE REPLIES:Plaintiff's  
Submissions  
in Reply

Agrees with Mr. Williams that all he is to show that there was an arguable defence and for Plaintiff to succeed the case must be perfectly clear.

On the question of fact, there is triable issue. This does not help the defendant.

Question of Law:

10 New Zealand cases do not help us at all. What is meant by a "sale effected" can only help was in an indirect way when we come to consider the meaning of a Transfer effected. The Canadian case does help.

20 The words "transfer effected" do not necessarily mean that the full purchase price was paid or that purchaser must have been put in possession, but at least the legal title to the land must have been transferred. The contract itself achieves an equitable interest. The contract with North Western created a title in equity with the purchaser.

Wiseman in Transfer of Land 2nd Ed. Pg. 173  
Ph. 122(a) Pg. 69 Para. B.

An instrument is inoperative until registered.

Williams on Vendor & Purchaser 3rd Ed. V. 2,  
Pg. 1141

30 A transfer of registered land is effected on the execution of the instrument of transfer followed by the Registration of the Transfer.

Wiseman Pg. 69.

Hogg on Australian Tavern System, Pgs. 789 &  
790.

All the Authorities clearly show that it is the Registration of the Transfer which was the effect and nothing else.

In the  
Supreme Court  
of Jamaica

If a Conveyance was not effected until  
delivering, then a transfer is not "effected"  
until registered.

No.22  
Plaintiff's  
Submissions  
in Reply  
(continued)

S 86 A. Civil Procedure Code. A minute of  
Order must be filed. Specific Performance was  
the Normal Remedy.

No.23  
Defendant's  
Submissions  
in Reply

No. 23

DEFENDANT'S SUBMISSIONS IN REPLY

MR. WILLIAMS REPLIES:

Execution of Transfer created Equitable Right. 10  
This amount to a Transfer being effected.

The Transfer itself creates Equitable interest.  
It is arguable that Execution of Transfer and its  
lodging can be treated as effected just like a  
contract of sale being effected when signed.

No.24  
Judge's  
Findings

No. 24

JUDGE'S FINDINGS

- (1) Agreement dated 4th April, 1961 illegal and  
void at time it was made.
- (2) Agreement dated 4th April, 1961 validated as 20  
a result of Law 36 of 1968.
- (3) Agreement allegedly dated 25th May, 1968 in  
existence.
- (4) Transfer executed in relation to agreement  
dated 25th May, 1968 and lodged.
- (5) Transfer "effected" means Transfer  
registered.
- (6) Transfer not registered.
- (7) S. 3 (2) Law 36 of 1968 does not operate in 30  
favour of defendant.

No. 25

JUDGE'S NOTES

In the  
Supreme Court  
of Jamaica

No.25

Judge's Notes

Mr. Coore seeks to amend minute of Order in Pgh. 3 after words "referred to in" to strike out words "The Writ of Summons" and substitute the words "Amended Statement of Claim".

Mr. Williams does not object.

Amendment is granted.

Summary Judgment granted.

10 Order in terms of Paragraph 1 of Summons for Judgment dated 2nd October, 1968.

Certificate for Counsel granted.

Costs to Plaintiff on Summons for Injunction and Certificate for Counsel.

Mr. Williams applies for Stay of Execution until final determination of this matter.

BY CONSENT:

Stay of Execution granted for 6 weeks.

No. 26

In the Court  
of Appeal of  
Jamaica

20

NOTICE AND GROUNDS OF APPEAL

Suit No. C.L. 716 of 1968

No.26

In the Court of Appeal

Civil Appeal No. 37 of 1968

Notice and  
Grounds of  
Appeal

BETWEEN

ROSE HALL LIMITED

DEFENDANT/  
APPELLANT

4th December  
1968

A N D

ELIZABETH LOVEJOY REEVES

PLAINTIFF/  
RESPONDENT

TAKE NOTICE that the Court of Appeal will be moved as soon as Counsel can be heard on behalf of

In the Court  
of Appeal of  
Jamaica

—  
No.26

Notice and  
Grounds of  
Appeal

4th December  
1968  
(continued)

the abovenamed Defendant/Appellant ON APPEAL from the whole of the judgment herein of the Honourable Mr. Justice Zacca given at the Summons for Judgment herein on the 24th day of October, 1968 whereby it was ordered that there should be judgment for the Plaintiff in terms of paragraph 1 of the Summons for Judgment.

For an Order:

- (a) That the said judgment be set aside.
- (b) That the Defendant be given leave to defend.
- (c) That the Plaintiff do pay to the Defendant the costs of and incident to this Appeal. 10

AND FURTHER TAKE NOTICE that the grounds of this appeal inter alia are:-

- (1) The Learned Judge erred in giving the Plaintiff summary judgment on her Summons herein.
- (2) The Learned Judge erred in holding that there was no triable issue in this case and that there was no merit whatsoever in the Defence and ought to have given the Defendant leave to defend. 20
- (3) The Learned Judge erred in holding that the only possible interpretation of the words ".....transfer....of land effected....." in Section 3 sub-section 2 of the Local Improvements (Amendment) Act 1968 was that they mean that the transfer must be registered before it could be said to be effected.
- (4) The learned Judge erred in disregarding or alternatively in failing to apply the authorities which indicated that in the context of the Local Improvements (Amendment) Act 1968 the words "...transfer ..... of land effected ....." mean when the transfer has been executed and lodged for registration and he further erred in holding that it was not even reasonably arguable that the said words had such a meaning. 30

(5) In any event, the Learned Judge erred in holding that specific performance was the proper remedy in this case and further erred in holding that there was no triable issue as to whether specific performance or damages was the proper remedy.

In the Court of Appeal of Jamaica

No.26

Notice and Grounds of Appeal

4th December 1968

(continued)

SETTLED.

(Sgd.) Ronald H. Williams.

DATED the 4th day of December, 1968.

10

Clinton Hart & Co.

Solicitors for the Defendant/  
Appellant

TO: The Plaintiff/Respondent,  
Or her Solicitors,  
Messrs. A.E. Brandon & Co.,  
45 Duke Street,  
Kingston.

Filed by Clinton Hart & Co., of 58 Duke Street,  
Kingston, Solicitors for and on behalf of the  
Defendant/Appellant herein.

20

No. 27

NOTICE OF FRESH GROUNDS OF APPEAL

NOTICE OF INTENTION to apply at the hearing of appeal for leave to adduce fresh evidence and amend grounds of appeal.

Suit No. C.L. 716 of 1968

IN THE COURT OF APPEAL

Civil Appeal No. 37

BETWEEN ROSE HALL LIMITED

DEFENDANT/  
APPELLANT

30

A N D ELIZABETH LOVEJOY REEVES

PLAINTIFF/  
RESPONDENT

No.27

Notice of Fresh Grounds of Appeal

7th May 1969

In the Court  
of Appeal of  
Jamaica

\_\_\_\_\_  
No. 27

Notice of  
Fresh Grounds  
of Appeal

7th May 1969  
(continued)

TAKE NOTICE that the above-named defendant intends at the hearing of the appeal under the defendant's notice of appeal dated the 4th day of December, 1968 from the judgement herein of the Honourable Mr. Justice Zacca given on the 24th day of October, 1968 to apply to the Court of Appeal for special leave to adduce in addition to the evidence before the Court below the following evidence.

The affidavit of Desmond Morris sworn herein on the 5th day of May 1969 in which it is disposed, inter alia that the defendant does not find conditions 1, 3 and 6 of the Parish Council approval acceptable to it and accordingly by virtue of Clause 7(D) of the agreement between the parties it regards the said agreement as null and void and has so informed the plaintiff, and in which affidavit it is explained why the defendant/appellant had taken no steps in relation to the said Parish Council conditions until after the hearing of the plaintiff's Summons herein.

10

20

The affidavit of Hugh Cecil Hart sworn herein on the 5th day of May 1969 in which it is also explained why the defendant/appellant had taken no steps in relation to the said Parish Council conditions until after the hearing of the Plaintiff's Summons herein.

AND FURTHER TAKE NOTICE that the grounds of such application are that

- 1(a) Up to the second day of October 1968, the date of the service of the Writ in the action, the defendant had no reason to take any steps in relation to the said Parish Council conditions.
- (b) Between the date and up to the hearing of the Summons herein the person in effective control of the defendant was out of the jurisdiction and not available for consultation.
- (c) In any event the defendant had not sufficient time for a comprehensive review of the issue in this case including the question of the said Parish Council conditions.

30

40

2. That the nature of the evidence which the defendant now seeks leave to adduce is such that had it been before the Court on the trial of the said Summons the plaintiff probably would have been unable to rebut it and such evidence would probably <sup>have</sup> had an important influence on the result of the Summons.

In the Court  
of Appeal of  
Jamaica

—  
No. 27

Notice of  
Fresh Grounds  
of Appeal

7th May 1969  
(continued)

10

3. That the nature of the evidence which the defendant now seeks ~~to~~ leave to adduce is such that it ought to be before the Court in order to ensure the determination on the merits of the relevant questions in controversy between the parties.

20

AND FURTHER TAKE NOTICE that the above-named defendant intends at the hearing of this Appeal to apply for leave to amend the Grounds of Appeal herein by adding thereto as paragraph (6) "As the defendant has objected to terms numbers 1, 3 and 6 of the Saint James Parish Council Approval dated the 9th day of October, 1963, the contract dated 4th April, 1961 made between the plaintiff and the defendant is null and void pursuant to the provisions of Clause 7(d) of the said contract".

DATED the 7th day of May 1969

illegible

\_\_\_\_\_  
Solicitors for the Defendant/Appellant

TO: The Plaintiff/Respondent  
Or her Solicitors  
Messrs. A.E. Brandon & Co.,  
45, Duke Street, Kingston.

30

Settled: Sgd. Ronald H. Williams

22nd April 1969.

Filed by Clinton Hart & Co. of 58, Duke Street,  
Kingston  
Solicitors for and on behalf of the Defendant/*Appellant*  
herein.

In the Court  
of Appeal of  
Jamaica

No. 28

AFFIDAVIT OF HUGH CECIL HART  
IN SUPPORT OF APPEAL

No.28

Affidavit of  
Hugh Cecil  
Hart in  
support of  
Appeal

Suit No. CL.716 of 1968

5th May 1969

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT OF JUSTICE

COMMON LAW

IN THE COURT OF APPEAL, Civil Appeal No.17 of 1968

BETWEEN ELIZABETH LOVEJOY REEVES PLAINTIFF

A N D ROSE HALL LIMITED DEFENDANT

I, HUGH CECIL HART, being duly sworn make  
oath and say as follows:

10

1. My true place of abode is 19 Queensway in the  
parish of St. Andrew and my postal address is 58,  
Duke Street, Kingston. I am a Solicitor of the  
Supreme Court of Judicature of Jamaica and a  
partner of the firm of Clinton Hart & Co.,  
Solicitors for the Defendant herein.

2. The summons upon which the judgement  
appealed against in this matter was given was  
served on my firm on the 2nd day of October, 1968  
at 3.20 p.m. and was for hearing on the 9th day of  
October, 1968. This matter was one of great  
difficulty and complexity and Counsel was  
immediately instructed to appear at the hearing  
on the 9th October and did so.

20

3. Mr. John Rollins who is the person in  
effective control of the defendant/appellant had  
prior to the date of the service of the Writ of  
Summons and the Statement of Claim in the action  
indicated to me that he regarded certain  
conditions of the Parish Council's approval as  
totally unacceptable, but I had advised him that  
no consideration need be given to them as the  
contract was void and thus no steps whatever  
should be taken in relation to these conditions.

30

4. Between the date of the Service of the Writ



and the Statement of Claim in the action and the hearing of the Summons herein the said Mr. John Rollins who is a citizen of the U.S.A. and travels extensively throughout the world was out of the jurisdiction and I was unable to contact him for final confirmation of the unacceptability of the said conditions.

10

5. In any event the time between the service of the Summons and the hearing was quite inadequate for a comprehensive examination to be made of all the issues raised in this case, and all the possible defences available, and it is only after the Judge's decision that the Defendant has properly been able to apply its mind to all aspects of the matter including the said Parish Council's conditions.

20

SWORN to at Kingston  
in the parish of Kingston  
this 5th day of May 1969. } Hugh Cecil Hart (Sgd.)  
Before me:

A. S. Dujon (Sgd.)

Justice of the Peace for  
the Parish of St. Andrew

Filed by Clinton Hart & Co., of 58 Duke Street,  
Kingston  
Solicitors for and on behalf of the Defendant  
herein.

30

No. 29  
AFFIDAVIT OF DESMOND MORRIS IN SUPPORT  
OF APPEAL  
Suit No. C.L. 716 of 1968

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN THE HIGH COURT OF JUSTICE  
COMMON LAW

In the Court  
of Appeal of  
Jamaica

—  
No.28

Affidavit of  
Hugh Cecil  
Hart in  
support of  
Appeal

5th May 1969  
(continued)

No.29

Affidavit of  
Desmond Morris  
in support  
of Appeal

In the Court  
of Appeal of  
Jamaica

No.29

Affidavit of  
Desmond  
Morris in  
support of  
Appeal

5th May 1969  
(continued)

IN THE COURT OF APPEAL Civil Appeal No.37 of 1968  
BETWEEN ELIZABETH LOVEJOY REEVES PLAINTIFF  
A N D ROSE HALL LIMITED DEFENDANT

I, DESMOND MORRIS, being duly sworn make oath  
and say as follows:-

1. My true place of abode and postal address is  
Cottonwood, P.O. Box 186, Montego Bay in the  
parish of St. James, and I am a Director of Rose  
Hall Limited.

2. I exhibit herewith marked "DM1" for identity  
a copy of the resolution passed at a meeting of  
the Saint James Parish Council held on the 17th  
day of November, 1963 which sets out the conditions  
upon which the Saint James Parish Council were  
prepared to approve the sub-division Plans sub-  
mitted to it in respect of the property which was  
the subject matter of the Contract which is at  
present in dispute between the parties to this  
action. 10

3. I would refer to Clause 7(D) of that  
contract which expressly states that if any terms  
of the sub-division approval granted by the  
St. James Parish Council were not acceptable to  
the Defendant/Appellant, the whole agreement  
should be null and void. 20

4. I have now consulted with Mr. John Rollins,  
who is the person in effective control of the  
Defendant/Appellant and am authorized to state  
that the Defendant/Appellant does not find  
conditions 1, 3 and 6 of the said Parish Council  
Approval acceptable to it, and accordingly  
regards the agreement as null and void. 30

5. I instructed the Defendant/Appellant's  
Solicitors to inform the Plaintiff/Respondent of  
my Company's decision and I exhibit herewith  
marked "DM2" for identity a copy of a letter  
dated 2nd day of January, 1969 written by the  
said Solicitors to that effect.

6. I also exhibit herewith marked "DM3" for  
identity a copy of the letter received by the  
Defendant/Appellant's Solicitors in reply. 40

7. Although the Defendant/Appellant had previously considered the said Parish Council's conditions unacceptable it had taken no steps in relation thereto until after the hearing of the Plaintiff's Summons herein because:

In the Court  
of Appeal of  
Jamaica

—  
No.29

Affidavit of  
Desmond  
Morris in  
support of  
Appeal

5th May 1969  
(continued)

10

(a) Up to the 2nd day of October 1968, the date of the service of the Writ and Statement of Claim in the action, I had been advised, and believed, that the agreement for sale between the Plaintiff and the Defendant was in any event null and void, because of the provisions of the Local Improvements Law, and it would have been most illogical to have informed the Plaintiff that the Defendant was relying upon a term of the contract between them when the Defendant was alleging in any event that the contract was not valid.

20

(b) Between the date of the service of the said Writ and Statement of Claim and the date of the hearing of the Summons herein the said Mr. John Rollins was out of the jurisdiction and not available for consultation as to final confirmation of the unacceptability of the said conditions.

30

(c) In any event the time between the service of the Summons and the hearing was quite inadequate for a comprehensive examination to be made of all the issues raised in this case, and all the possible defences available, and it is only after the Judge's decision that the Defendant has been able to apply its mind fully to all aspects of the matter including the said Parish Council's conditions.

I accordingly pray that this honourable Court may grant this application and permit the grounds of Appeal to be amended.

40

SWORN to at Kingston  
in the Parish of Kingston  
this 5th day of May 1969.  
Before me: A.S. Dujon  
Justice of the Peace  
for the Parish of St. Andrew)

} Sgd. Desmond Morris

Filed by Clinton Hart & Co., of 58 Duke Street,  
Kingston. Solicitors for and on behalf of the  
Defendant herein.

In the Court  
of Appeal of  
Jamaica

., No. 30

AFFIDAVIT OF BRIAN CHARLES O'BRIEN  
NATION IN REPLY

No.30

Affidavit of  
Brian Charles  
O'Brien  
Nation in  
Reply

Suit No. C.L.716 of 1968

29th May 1969

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT OF JUSTICE

COMMON LAW

IN THE COURT OF APPEAL - Civil Appeal No.37 of 1968

BETWEEN ELIZABETH LOVEJOY REEVES PLAINTIFF/  
RESPONDENT

10

A N D ROSE HALL LIMITED DEFENDANT/  
APPELLANT

I, BRIAN CHARLES O'BRIEN NATION being duly  
sworn make oath and say as follows:

1. My true place of abode is at Reading in the  
Parish of Saint James, my postal address is "P.O.  
Box 334, Montego Bay Post Office" and I am a  
Solicitor of the Supreme Court of Judicature of  
Jamaica being a partner of the firm of Nation,  
Lord & deLisser, Solicitors for the Plaintiff-  
Respondent.

20

2. I have had the opportunity of perusing and  
examining the Affidavits of Hugh Cecil Hart and  
Desmond Morris both sworn on the 5th day of May  
1969 and filed to ground an Application to this  
Honourable Court for the hearing of further  
evidence in the Appeal herein and for the  
amendment of the Grounds of Appeal.

3. I contradict the allegation made in para-  
graphs 2 and 7(a) respectively of the Affidavits  
of the said Hugh Cecil Hart and Desmond Morris  
wherein it was stated that the Writ of Summons and  
Statement of Claim adjudicated upon by the Court  
of First Instance was served on the 2nd October  
1968 as in truth and in fact the said Writ of  
Summons and Statement of Claim were served by me  
personally on the 17th day of September 1968 as  
was evidenced by an Affidavit of Service sworn by  
me and duly filed.

30

4. The suggestion contained in the said Affidavits to the effect that the time allowed for the preparation of the Defence was too short to permit all relevant defences to be considered is misleading and incorrect because in fact the period during which such consideration would have been given and acted upon extended from the said 17th day of September 1968 to the 24th October 1968 (the day of final hearing before Mr. Justice Zacca sitting in Chambers) the said hearing having begun on the 9th day of October 1968.

In the Court  
of Appeal of  
Jamaica

—  
No.30

Affidavit of  
Brian Charles  
O'Brien  
Nation in  
Reply

29th May 1969  
(continued)

5. The Defendant-Appellant by implication accepted the conditions imposed by the Saint James Parish Council in that subsequent to the imposition of such conditions on the 17th day of November 1963, letters (exhibited herewith and hereafter particularly described) passed between Mr. Peter Kerr-Jarrett the then Solicitor for the Defendant-Appellant and Rosser Reeves (the husband and agent of the Plaintiff-Respondent) and me confirming the implementation or proposed implementation of the Contract of Sale and Purchase and also monies payable on account of purchase price and interest thereon were paid to and accepted by the Defendant-Appellant.

6. The Plaintiff-Respondent was upon execution of the said Contract of Sale and Purchase and payment of the deposit placed in possession of the said land and that at no time subsequent to the imposition of the said conditions and up to the date hereof was the Plaintiff-Respondent requested to deliver up possession to the Defendant-Appellant.

7. I exhibit hereto copies of the following letters marked in manner hereunder indicated:

<u>DESCRIPTION OF LETTER</u>	<u>MARKED</u>
1. Letter of 16th March 1964 addressed to me by the said Peter Kerr-Jarrett	BN.1
2. Letter of 3rd April 1964 addressed to me by the said Peter Kerr-Jarrett	BN.2
3. Letter of 22nd April 1964 addressed to the said Peter Kerr-Jarrett by Rosser Reeves (the husband and agent of the Plaintiff-Respondent)	BN.3

In the Court  
of Appeal of  
Jamaica

No.30

Affidavit of  
Brian Charles  
O'Brien  
Nation in  
Reply

29th May 1969  
(continued)

DESCRIPTION OF LETTER

MARKED

- |    |  |      |
|----|--|------|
| 4. | Letter of 27th April 1964 addressed to the said Rosser Reeves by Peter Kerr-Jarrett  | BN.4 |
| 5. | Letter of 15th May 1964 addressed to me by the said Peter Kerr-Jarrett   | BN.5 |
| 6. | Letter of 18th May 1964 addressed by me to the said Peter Kerr-Jarrett   | BN.6 |
| 7. | Letter of 25th November 1964 addressed to Rosser Reeves (the husband and agent of the Plaintiff-Respondent) by the said Peter Kerr-Jarrett and copied to my firm | BN.7 |
| 8. | Letter of 11th January 1965 addressed to the Bank of Jamaica by Kerr-Jarrett & Company (the firm of the said Peter Kerr-Jarrett) and copied to me                | BN.8 |

10

(Sgd.) B. C. O'B. NATION

SWORN to at Montego Bay in the Parish of Saint James this 29th day of May 1969 Before me:

20

(Sgd.) Alice H. Eldemire

J.P. St. James

No.31

Affidavit of  
Desmond  
Morris in  
support of  
Appeal

2nd July 1969

No. 31

AFFIDAVIT OF DESMOND MORRIS  
IN SUPPORT OF APPEAL

Suit No. C.L. 716 of 1968

In the Supreme Court of Judicature of Jamaica

In the High Court of Justice

Common Law

30

In the Court of Appeal - Civil Appeal No.37 of 1968

BETWEEN	ELIZABETH LOVEJOY REEVES	PLAINTIFF
A N D	ROSE HALL LIMITED	DEFENDANT

I, DESMOND MORRIS, being duly sworn make oath and say as follows:-

In the Court  
of Appeal of  
Jamaica

—  
No. 31

Affidavit of  
Desmond  
Morris in  
support of  
Appeal

2nd July 1969  
(continued)

1. My true place of abode and postal address is Cottonwood P.O. Box 186 Montego Bay in the parish of Saint James, and I am a Director of Rose Hall Limited.

2. I have perused and examined the affidavit of Brian Charles O'Brien Nation filed herein and sworn to on the 29th May 1969.

10 3. I was mistaken in stating in paragraph 7a of my affidavit that the writ and statement of claim in this action was served on the 2nd October 1968, as this was the date of the service of the Summons on which Judgment was given in this matter as is stated in the affidavit of Hugh Cecil Hart filed herein and sworn on the 5th May 1969. I nevertheless affirm the other statements made in paragraph 7 of my previous affidavit, and  
20 say that there was no time to take proper instructions from Mr. John Rollins, between the date of the service of the Writ and Statement of Claim and the Summons and the hearing of the Summons for Judgement itself.

30 4. Mr. John Rollins did not take any interest in the Appellant Company till the 13th February 1965, when he agreed to purchase the shares through Rollins Jamaica Ltd. The correspondence exhibited to the said affidavit of Brian Charles O'Brien Nation all relates to a period before Mr. Rollins had an interest in Rose Hall Ltd., and this is the first time that I have ever seen that correspondence.

5. With regard to paragraph 6 of the said affidavit of Brian Charles O'Brien Nation, I would state that the Appellant still pays the taxes for the said land, and that no one is in de facto possession, and the land is largely swamp and bush and has no dwellings or habitations on it.

40 SWORN to at Kingston )  
in the Parish of Kingston ) (Sgd.) Desmond Morris  
this 2nd day of July 1969 )  
Before me:

(Sgd.) A. S. Dujon  
Justice of the Peace for  
the Parish of St. Andrew

Filed by Clinton Hart & Co.  
of 58 Duke Street, Kingston,  
Solicitors for and on behalf  
of the Defendant herein.

In the Court  
of Appeal of  
Jamaica

No. 32

AFFIDAVIT OF HUGH CECIL HART IN  
SUPPORT OF APPEAL

No.32

Affidavit of  
Hugh Cecil  
Hart in  
support of  
Appeal

Suit No. C.L. 716 of 1968

2nd July 1969

In the Supreme Court of Judicature of Jamaica

In the High Court of Justice

Common Law

In the Court of Appeal - Civil Appeal No.37 of 1968

BETWEEN ELIZABETH LOVEJOY REEVES PLAINTIFF

A N D ROSE HALL LIMITED DEFENDANT

10

I, HUGH CECIL HART, being duly sworn make  
oath and say as follows:-

1. My true place of abode is 19 Queensway in the  
Parish of Saint Andrew and my postal address is  
58 Duke Street, Kingston. I am a Solicitor of the  
Supreme Court of Judicature of Jamaica and a  
partner of the firm of Clinton Hart & Company,  
Solicitors for the Defendant herein.

2. I have now perused the affidavit of Brian  
Charles O'Brien Nation filed herein and sworn on  
the 29th May 1969 and would contradict the  
allegation made in paragraph 3 thereof in so far  
as my previous affidavit filed herein and sworn  
to on the 5th May 1969. In that previous  
affidavit I dealt correctly with the date of the  
service of the Summons upon which Judgement was  
given herein.

20

3. Due to an error the date of the Service of  
the Writ of Summons was confused with the date of  
Service of the Summons in paragraph 1a of the  
Notice of Intention to Apply at the hearing of  
Appeal for leave to adduce fresh evidence and  
amend grounds of Appeal dated the 7th May 1969.

30

4. The Writ of Summons and Statement of Claim  
does indeed appear to have been served upon Mr.  
Peter Kerr-Jarrett in Montego Bay on the 17th  
September 1968, and this Writ and Statement of



Claim was sent to me by letter dated 18th September 1968 by Mr. Peter Kerr-Jarrett. I cannot say specifically when I received these documents, but it must have been sometime after the 19th September 1968.

In the Court  
of Appeal of  
Jamaica

—  
No.32

Affidavit of  
Hugh Cecil  
Hart in  
support of  
Appeal

2nd July 1969  
(continued)

10 5. I could not at that time deal with the matter fully as I did not have all the necessary background knowledge and correspondence. I did not receive these until sometime after 25th September 1968, and I exhibit herewith marked HCH1 for identity a copy of the letter from Mr. Kerr-Jarrett of that date addressed to me which enclosed the relevant correspondence and documents to enable me to study the position properly.

20 6. The Summons for Judgement itself was served on my firm as stated, on the 2nd October 1968, and was for hearing on the 9th October 1968. It was necessary to file an affidavit in reply and a draft Defence, and a brief was then prepared and sent to Counsel on the 3rd October 1968, and Mr. Desmond Morris' original affidavit in reply to the affidavit in Support of Summons for Judgement was filed on the 7th October 1968. No time at all was wasted, but of necessity the matter was one of great urgency and neither I nor Counsel were able to consider properly all aspects of the matter and all the Defences available to Rose Hall Ltd.

30 SWORN to at Kingston  
in the Parish of Kingston }  
this 2nd day of July 1969. } (Sgd. ) H. C. HART  
Before me: }

(Sgd.) A.S. Dujon

Justice of the Peace for  
the Parish of St. Andrew

Filed by Clinton Hart & Co. of 58 Duke Street,  
Kingston, Solicitors for and on behalf of the  
Defendant herein.

In the Court  
of Appeal of  
Jamaica

No. 33

JUDGMENT OF THE COURT OF APPEAL

No.33

Judgment of  
the Court of  
Appeal

24th March  
1972

IN THE COURT OF APPEAL  
CIVIL APPEAL NO.37 of 1968

BETWEEN	ROSE HALL LIMITED	DEFENDANT/ APPELLANT
A N D	ELIZABETH LOVEJOY REEVES	PLAINTIFF/ RESPONDENT

BEFORE: Hon. Mr. Justice Luckhoo President (Ag.)  
Hon. Mr. Justice Smith, J.A.  
Hon. Mr. Justice Graham-Perkins, J.A.

10

THE 24th DAY OF MARCH, 1972

This Appeal having come on for hearing on the 23rd, 24th, 25th and 26th days of November, 1971, the 17th day of January, 1972 and the 21st day of February, 1972 and it having been ordered by a majority on the 24th day of March, 1972 that the Appeal be dismissed IT IS THIS DAY ADJUDGED that the Appeal herein be dismissed with costs to the Respondent and that the Order of the Trial Judge be affirmed.

20

CLINTON HART & CO.

DEFENDANT/APPELLANTS ATTORNEYS-AT-LAW

Entered by CLINTON HART & CO. of 58 Duke Street,  
Kingston, Attorneys-at-Law for and on behalf of  
the Defendant/Appellant herein.

No. 34

JUDGMENT OF LUCKHOO, Ag.P.

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL No. 37 of 1968

BEFORE: The Hon. Mr. Justice Luckhoo, Ag.P.  
The Hon. Mr. Justice Smith, J.A.  
The Hon. Mr. Graham-Perkins, J.A.

In the Court  
of Appeal of  
Jamaica

No. 34

Judgment of  
Luckhoo, Ag.P.

10 ROSE HALL LTD. - DEFENDANT/  
APPELLANT

ELIZABETH LOVEJOY REEVES - PLAINTIFF/  
RESPONDENT

V.O. Blake, Q.C., and R.H. Williams Q.C.,  
for the appellant.  
D.H. Coore, Q.C., and D. Scharschmidt  
for the respondent

November 23-26, 1971;  
January 17, February 21,  
March 24, April 14, 1972

20 LUCKHOO, Ag. P.:

This is an appeal from the judgment of Zacca, J. given on October 24, 1968 granting the respondent's application by way of summons for leave to sign summary judgment pursuant to s. 86A of the Civil Procedure Code, Cap. 177, in a claim for the specific performance of an agreement of sale and purchase of two parcels of land entered into on April 4, 1961, by and between the appellant as vendor and the respondent as purchaser.

30 The appellant wishes to have the judgment of Zacca, J. set aside and to be given leave to defend the respondent's claim for specific performance of the aforesaid agreement on the ground that he has a good defence to the action on the merits or that at any rate there is a substantial issue to be tried. The appeal turns largely on the proper interpretation to be given to the provisions of s.3(2) of the Local Improvements (Amendment) Act, 1968 (No.36). The facts not in dispute are as

In the Court  
of Appeal of  
Jamaica

—  
No. 34

Judgment of  
Luckhoo, Ag.P.  
(continued)

follows. On April 4, 1961, the appellant agreed to sell the respondent two parcels of land part of the appellant's property situate in the parish of St. James for the sum of £50,000 and upon certain terms and conditions. The respondent duly paid the sum of £12,500 by way of deposit and, thereupon, in compliance with one of the terms of the contract the appellant delivered possession of the parcels to the respondent. It was necessary under the provisions of s. 6 of the Local Improvements Law, Cap.227, for the sanction of the St. James Parish Council to be obtained for the sub-division of the appellant's land contemplated by the agreement for sale and purchase and to this end it was necessary under s.4 of that Law for a plan of the land to be subdivided as well as certain specifications and estimates to be submitted to the Parish Council for its consideration. Under that Law these provisions had to be complied with prior to the making of any agreement of sale involving the laying out or sub-division of the land. The parties omitted to obtain the Parish Council's sanction in this regard before entering into the agreement of April 4, 1961, and as has been decided by the Supreme Court of Jamaica in cases where a similar omission occurred, the agreement so made was illegal and void ab initio. See Watkis v. Roblin (1964) 6 W.I.R. 533. The parties, however, treated the agreement as if it were valid and subsisting. In 1964 when the St. James Parish Council gave its sanction to the sub-division subject to certain conditions that fact was communicated by the appellant's solicitor and agent to the respondent's solicitors by letter dated March 16, 1964. Later on the respondent paid the appellant a further sum of £12,500 on account of the purchase price under the agreement. The balance of £25,000 was, under the agreement, to be paid not later than April 4, 1971.

10

20

30

Sometime during 1965 a Mr. John Rollins (who had by then become the majority shareholder in Rollins Jamaica Ltd. which itself had become the majority shareholder in the appellant company) began to take an interest in the transaction. Mr. Rollins wished to have the two parcels of land remain in the appellant's ownership and to that end negotiations were put in train for a re-purchase of the parcels from the respondent. A draft agreement of sale and purchase bearing date

40

January 15, 1968 was prepared by solicitor for the Rose Hall (Developments) Ltd. for consideration by the respondent. The consideration proposed therein for the re-purchase was \$365,000 U.S., a sum more than twice that for which the appellant agreed to sell the two parcels to the respondent. However, the respondent did not wish to return the parcels to the appellant and informed the appellant accordingly.

In the Court  
of Appeal of  
Jamaica

—  
No. 34

Judgment of  
Luckhoo, Ag.P.  
(continued)

10           On December 11, 1967, before the preparation  
of the draft agreement, the respondent had caused  
a caveat to be entered against all dealing with  
the two parcels. On May 28, 1968, a company, North  
Western Enterprises Ltd., was registered under the  
Companies Act, 1965. It is not necessary to enquire  
into the circumstances under which and the  
purposes for which this company came to be formed.  
An agreement of sale and purchase bearing date  
20           May 25, 1968 was executed on behalf of the  
appellant as vendor and North Western Enterprises  
Ltd. as purchaser in respect of the two parcels of  
land. Whether the agreement was in fact executed  
on the date it bears or, as claimed by the appellant,  
at some later date is not material to this appeal.  
Pursuant to that agreement an instrument was  
executed on September 12, 1968 for the transfer by  
the appellant of all its estate and interest in  
the two parcels of land to North Western Enterprises  
30           Ltd. That instrument of transfer was on September  
13, 1968 lodged with the Registrar of Titles for  
registration, but the transfer was never registered  
because of the existence of the caveat which had  
been entered by the respondent on December 11, 1967,  
in protection of the interest she claimed under the  
agreement of April 4, 1961 in the two parcels.  
Accordingly the legal estate in the parcels has  
never been passed to North Western Enterprises Ltd.  
(see s.84 of Cap.340). Before that, in August,  
40           1968, the respondent offered to pay the appellant  
all moneys outstanding under the agreement of  
April 4, 1961, but this offer was not accepted by  
the appellant.

It is common ground that by virtue of the provisions of s.6 of the Local Improvements Law, Cap.227, the agreement of April 4, 1961 was invalid there being a failure, before the agreement was entered into, to apply for the St. James Parish Council's sanction to the sub-division of the land.

In the Court  
of Appeal of  
Jamaica

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No. 34

Judgment of  
Luckhoo, Ag.P.  
(continued)

On August 22, 1968, there was enacted the Local Improvements (Amendment) Act, 1968 (No.36) s.3(1) of which amends Cap. 227 by the insertion of the following provision as section 9A(1) -

"The validity of any sub-division contract shall not be affected by reason only of failure, prior to the making of such contract, to comply with any requirement of subsections (1), (2) and (3) of section 4 or to obtain any sanction of the Board under section 6 or section 6A, as the case may be, but such contract shall not be executed by the transfer or conveyance of the land concerned unless and until sanction of the Board hereinbefore referred to, has been obtained."

10

Section 3(2) of the 1968 amending Act provides as follows:-

"This section shall be deemed to have come into operation on the 1st day of January, 1954 hereinafter referred to as the "operative day" so, however, that as respects transactions which took place between the operative day and the date of enactment of this Act, the amendment effected in the principal Law by virtue of this section of this Act shall not operate so as to nullify or affect any transfer or conveyance of land effected pursuant to any contract of sale made prior to the date of enactment of this Act."

20

30

It is also common ground that the effect of the provisions of s.9A of Cap.227 with its operative date as January 1, 1954, as specified by s.3(2) of the 1968 amending Act is to render valid the agreement of April 4, 1961 from the date it bears. It is not denied (though only for the purposes of this appeal) that the agreement between the appellant and North Western Enterprises Ltd. bearing date May 25, 1968 is and always has been a valid contract in that the Parish Council's sanction to the sub-division had been obtained prior to the date it was entered into. It is also not denied (though only for the purposes of this appeal) that under this latter agreement the equitable estate in respect of the two parcels

40

became vested in North Western Enterprises Ltd. However, before Zacca, J. and also before us it was submitted on behalf of the appellant that when the instrument of transfer was lodged for registration pursuant to the agreement bearing date May 25, 1968 there was a "transfer effected" pursuant to a contract of sale made prior to the date of enactment of the 1968 amending Act which by reason of the provisions of s.3(2) of that Act remained unaffected although the earlier agreement dated April 4, 1961 between the appellant and the respondent had been validated with effect from the date that agreement bore; that in effect though validated the earlier agreement in the events which had occurred was not specifically enforceable against the vendor. Zacca, J., however, upheld the respondent's contention that the words "transfer... effected" in s.3(2) of the amending Act of 1968 meant transfer registered and as the transfer in this case was never registered the provisions of s.3(2) of the amending Act of 1968 did not afford the appellant an answer to the respondent's application to sign summary judgment. There being no other issues raised by the appellant in opposition to the respondent's application for summary judgment (any facts not admitted being assumed in favour of the appellant) the learned judge made the order prayed by the respondent.

At the hearing of this appeal counsel for the appellant Mr. Blake stated that we would not be troubled with the appellant's application made to this Court for leave to adduce further evidence. It is not necessary therefore to say anything in respect of that application except to note that it has been abandoned.

The first ground of appeal argued before us related to a question which was not raised nor argued before Zacca, J. The agreement of April 4, 1961 contains as paragraph (g) under the heading of "SPECIAL CONDITIONS" the following -

"The vendor will obtain the consent of the registered proprietors of any mortgage now affecting the Property (in such a manner as to be binding on their transferees and assignees) to the purchase price therein, and the terms of payment thereof and to the release of the Property from any such mortgage

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upon payment to the mortgagee by the vendor  
of half the purchase price."

Mr. Blake's submission on this ground is as follows. The decree of specific performance was wrongly pronounced because the respondent failed to show that the condition had been fulfilled. Such a provision is a condition precedent and therefore the onus was on the respondent as plaintiff to show that it had been fulfilled. It was for the judge to satisfy himself that all conditions precedent had been fulfilled (or waived by the party for whose benefit they were inserted which was not the case here) before pronouncing a decree of specific performance and therefore it was not necessary for the appellant to take this point by way of opposition to summary judgment being granted in the claim.

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Mr. Coore for the respondent submitted that it was not competent for the appellant to seek to take this point for the first time on appeal and that in any event the provision was not a condition precedent but rather was merely a term of the contract which would require the appellant by way of defence to show that some triable issue arose in relation thereto. Mr. Coore pointed out that the respondent by her agent has filed the appropriate affidavit verifying the cause of action and stating that in his belief there was no defence to the action. Further, Mr. Coore urged that the wording in the provision itself did not indicate that there was in fact a mortgage in existence at the time the agreement was entered into. There was therefore no necessity for the respondent to make any assertion in his affidavit in that regard and in any event it has not even been suggested by the appellant during the course of the argument in this appeal that there was in fact a mortgage existing when the agreement was entered into.

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In view of the fact that I consider that condition 11(g) as worded does not in fact assert the existence of a mortgage at the date of the agreement it is unnecessary to give any opinion on the other points raised by Mr. Coore. Condition 11(g) really only says in effect that if there is a mortgage existing at that time certain things will be done by the vendor. It does not



say that there is a mortgage in existence. There is therefore no need for the respondent to aver by affidavit in support of his claim or otherwise that there never was a mortgage in existence at the date of the agreement or that there was one but that the vendor has done what he undertook under condition 11(g) to do. It is not without significance, as Mr. Coore pointed out, that in the agreement between the appellant and North Western Enterprises Ltd. there is nothing to indicate the existence, at the date that agreement was executed, of any mortgage in relation to the parcels or any of them if ever there was one in existence at some earlier point of time.

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The main ground of appeal argued before us relates to the proper construction to be given to the words "transfer ..... effected" occurring in s.3(2) of the Local Improvements (Amendment) Act, 1968. Mr. Blake submitted that the proper construction to be given to those words is a matter which is not free from difficulty and on that basis alone the learned trial judge ought to have granted leave to defend. Mr. Coore, on the other hand, submitted that where a point of law involves the construction of a statute and its application to the facts which are agreed or established then the judge on a summons such as the one in this case has a duty to make up his mind even if it takes him a little time. I think that Mr. Coore's submission on this point is supported by authority. In Cow v. Casey (1949) 1 K.B. 474, the defendant sought leave to defend proceedings brought under O.14 of the English R.S.C. and relied on the Rent Restriction Acts. One of the matters urged was that the Rent Restriction Acts were complicated Acts and that the Court ought to be very cautious in treating under O.14 and should therefore give leave to defend. In dealing with that point on appeal from the order of Pritchard, J. confirming an order of Master Horridge, giving leave to the plaintiff to sign final judgment for possession with mesne profits, Lord Greene, M.R. said (at p.481):

"But it is not sufficient under an O.14 case to flourish the title of the Increase of Rent Restriction Acts in the face of the Court and say it is enough to give leave to defend. If a point taken under the Rent Restriction Acts is quite obviously an unarguable point, the

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Court has precisely the same duty under O.14 as it has in any other case. It may take a little longer to understand the point and to be quite sure that one has seen all around the case under the Rent Restriction Acts than in other case, but when the point is understood and the court is satisfied that it is really unarguable, the court has a duty to apply the rule ..."

It was next submitted by Mr. Blake that when the instrument of transfer was lodged with the Registrar of Titles for registration a transfer of the parcels from the appellant to North Western Enterprises Ltd. was effected which, under the provisions of s.3(2) of the Local Improvements Act, 1968, remained unaffected despite the validation of the earlier contract of sale between the appellant and the respondent. Mr. Blake contended that in holding that a transfer could not be said to be effected until it was registered the learned judge overlooked the provisions of s.57 of Registration of Titles Law, Cap.340 whereby an instrument of transfer is deemed to be registered at the date it is produced for registration provided the Registrar registers it in the appropriate way and also overlooked the fact that the passing of the legal estate or interest is not dependent on the act of the parties but on the act of the Registrar. It could hardly have been intended by the legislature, Mr. Blake argued, that a transferor or transferee who intended the legal estate or interest to pass could be defeated by reasons beyond his control e.g. delay by the Registrar in registering a transfer. Finally Mr. Blake urged that a court will always lean in favour of a construction of a statute which would protect vested rights. Mr. Coore, on the other hand, contended that Mr. Blake's observations on s.57 of the Registration of Titles Law, Cap.340 did not take into account the existence of the caveat system (as provided for by ss.133-137 of the Registration of Titles Law, Cap.340) whereby registration of transfers could not be made while a caveat was not cleared off and that in any event s.3(2) of the 1968 Act had no bearing on the matter as (i) the appellant's transaction with North Western Enterprises Ltd. is not a transaction contemplated by that subsection; (ii) and

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even if it were, the words "transfer ..... effected" in that sub-section means transfer registered and the appellant's transfer to North Western Enterprises Ltd. was not registered.

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10 Dealing first with (ii) above, if the construction of s.3(2) of the 1968 Act contended for by Mr. Blake is correct it would have the result, as Mr. Coore has pointed out, that in the case of land with a common law title the saving provision contained in s.3(2) would only apply if the legal estate or interest has passed by way of conveyance whereas in the case of land with a registered title the saving provision would apply while the legal estate or interest still remains in the vendor. A further observation may be made on this point. The signing and lodging of an instrument of transfer in itself creates no estate or interest in the purchaser. An equitable estate or interest may arise when the contract of sale is made. In the case of registered land the legal estate or interest is passed only when the transfer is registered.

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When regard is had to these matters and to the nature of the provisions of s.3(2) itself it seems clear that the words therein "transfer or conveyance of land effected" mean "transfer or conveyance of land registered or executed respectively". If this is the true interpretation of those words, as I think it is, then it is unnecessary to say more in respect of (i) above than that the transactions contemplated under the saving provision in s.3(2) relate only to transactions which were invalid by reason of non-compliance with ss.4 or 6A of Cap.227.

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The position then is that s.3(2) of the 1968 Act does not aid the appellant's endeavour to show that leave to defend should have been granted. Indeed s.3(2) specifically makes the amendments introduced by the 1968 enactment retrospective to January 1, 1954 so that the contract between the appellant and the respondent made on April 4, 1961 is to be considered as valid from the date it was entered into by the parties and enforceable from October 9, 1963, the date on which the sanction of the St. James Parish Council under s.6 of Cap.227 was obtained. In that event the equitable estate in the two parcels of land would be deemed to have passed under the contract to the respondent unless

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it is held that when the contract with North Western Enterprises Ltd. was made in 1968 prior to the enactment of the 1968 amending Act the equitable estate vested in that company by that contract remained undisturbed by that enactment. Mr. Blake submitted that the Court will always lean in favour of construction of a statute to protect vested rights. But in the case of the 1968 enactment it is not the case that it is being given a construction so as to have retrospective operation whereby it would follow that it should not be given a greater retrospective operation than its language renders necessary. The fact is that the enactment expressly states that its provisions are retrospective and specifically defines what rights are to remain undisturbed by the amendments contained in the enactment.

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It seems to me that the equitable rights acquired by North Western Enterprises Ltd. under that company's contract with the appellant have been adversely affected by the amendments made by the 1968 Act in that it is now deemed that under the respondent's contract with the appellant the equitable estate in the two parcels passed to the respondent as from October 9, 1963 and would take precedence over the equitable interest created in 1968 in favour of North Western Enterprises Ltd. under that company's contract of sale and purchase with the appellant.

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There remains the question whether specific performance, being a discretionary remedy, should have been decreed. The learned trial judge did not specifically state that he considered the question of the exercise of his discretion in making the order for specific performance of the appellant's contract of sale and purchase with the respondent. In the absence of anything on the record to indicate that he omitted to exercise his discretion in that regard it ought to be presumed that he did exercise it. In any event Mr. Blake has conceded, and I think he is correct in so doing, that there is on the record no material upon which the trial judge could have exercised his discretion against the respondent.

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I can see no good reason why the decree should be refused. In the result this Court ought to dismiss the appeal and affirm the order of the trial judge with costs of the appeal to the respondent.

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JUDGMENT OF SMITH, J.A.In the Court  
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10 The first point argued for the defendant company on appeal was that clause 11(g) of the agreement of sale is a condition precedent and there was no evidence before the judge in chambers, Zacca, J., to establish that this condition had been fulfilled; that the judge was, therefore, wrong in giving the plaintiff summary judgment on her summons. Assuming that this point could properly be taken for the first time on appeal, I am of opinion that it fails on two grounds.

20 Firstly, it was said that clause 11(g) is a condition precedent inserted in protection of the vendor (i.e. the defendant company) if it turned out that the mortgagee would not agree to release the mortgage upon payment of half of the purchase price so as to make it thereby possible for the vendor to transfer to the purchaser (i.e. the plaintiff) free of encumbrances as contemplated. I agree that the purpose of the condition is to enable the plaintiff to obtain a title unencumbered by the mortgage but this seems to me to be in the interest of the plaintiff and not the defendant. If a mortgagee withheld his consent the sale would be subject to the mortgage. Condition 11(g) clearly relates to title and not to the validity of the agreement. It did not prevent the relationship of vendor and purchaser from being established or coming into being. That such a relationship has been recognized to exist in this case (apart from the point as to illegality) cannot be doubted. This condition is much like that which was considered in Property and Bloodstock Ltd. v. Emerton [1967] 3 All E.R. 321. There a contract of sale of leasehold property by a mortgagee was made subject to the condition that the vendor obtain the consent of the landlord to the assignment of the lease to the purchaser. It was held that the condition was not a condition precedent to the formation of the contract of sale and the creation of the relation of vendor and purchaser between the mortgagee and the purchaser.

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It is, of course, on a construction of the contract of sale in question that a decision whether a condition is a condition precedent or not

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is to be reached. In the agreement under consideration clause 7 is as follows:-

"7. Encumbrances &  
Reservations:

Subject to:

- (a) existing easements for the right for water to drain along existing channels
- (b) the special conditions mentioned below
- (c) the covenants and stipulations in the Schedule hereto
- (d) the stipulations imposed by the Parish Council in granting subdivision approval and if any term of the said approval is not acceptable to the Vendor this agreement shall be null and void and the Vendor shall only be liable to repay all moneys paid hereunder but not interest thereon or any other compensation or damages whatsoever."

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The special conditions referred to in clause 7(b) are those set out in clause 11, including para.(g) of that clause. Of significance in deciding whether or not condition 11(g) is a condition precedent is the fact that the provision in clause 7 whereby the agreement may be rendered null and void is limited to the stipulations referred to in para.(d). In my judgment, on a true construction of the agreement, condition 11(g) is not a condition precedent but a mere term of the agreement.

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Secondly, assuming it is a condition precedent, in my opinion it is not fatal that no direct evidence was given in respect of it. As was submitted for the plaintiff, clause 11(g) does not say that there was any mortgage in existence at the time the agreement was made. I agree with Luckhoo, P. that the effect of the clause is that if there was a mortgage in existence certain things would be done by the vendor. If

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there was such a mortgage and the condition is a condition precedent, there would be no enforceable agreement if the consent of the registered proprietor of the mortgage had not been obtained. One would, therefore, ex hypothesi, expect the defendant company to resist the plaintiff's application for summary judgment on this ground. These facts, if they existed, would have been peculiarly within the knowledge of those acting for the company. But no such ground was alleged though it was clear on the pleadings that the plaintiff was asserting that she had a valid and enforceable agreement. No submission was made before the judge that the plaintiff had failed to prove that the condition was fulfilled and the point was not expressly taken in the grounds of appeal. The defendant company was clearly not contesting the summons on this ground for the obvious reason, I suspect, that no facts existed on which it could be based. It is significant that no attempt was made before us to allege that there was a mortgage and that the requisite consent had not been obtained though an elaborate attempt was made, but not pursued, to have fresh evidence admitted with a view to having the agreement declared null and void under clause 7(d). In my view, there was ample material before Zacca, J. from which the inference could reasonably be drawn either that there was no mortgage in existence or that, if there was, the necessary consent had been obtained.

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The other, and main, point argued for the defendant company was that Zacca, J. was wrong in holding that it was perfectly clear that the words "transfer ..... effected" in s.3(2) of the Local Improvements (Amendment) Act, 1968 could only mean "transfer ..... registered" and that it was not arguable at all that those words might have some different meaning. It was submitted that another possible construction that may be put on the word "effected" is that it relates to the act of the relevant party or parties and signifies the moment of time at which the transferor has properly done all within his power to do to pass the legal estate or interest to his transferee. It was said that that moment of time would be the date on which he produces to the registrar of titles a properly executed transfer in form contemplated by the statute and accompanied by all supporting documents. As this was a possible interpretation,

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it was contended, Zacca, J. should have given leave to defend.

Before the learned judge it was submitted as a general proposition that leave to defend should be given where a difficult question of law is involved. A fairly full argument was addressed to him on the proper interpretation of the words "transfer.....effected" with a view to showing, on the part of the defendant, that there was an arguable defence and, on the part of the plaintiff, that the meaning was perfectly clear. It seems to me that the learned judge could not decide whether the meaning was clear or not without making a serious attempt, with the assistance of the argument and applying the relevant rules of construction, to construe the words. In my opinion, it would be idle and a shirking of his responsibility for him, without properly considering the matter, simply to say "this looks difficult let some other judge decide it at a trial", perhaps on the same argument. I entirely agree with the submission for the plaintiff that if the only defence raised on an application for summary judgment is a question of law which is precisely defined and capable of being permanently decided on the basis of the undisputed evidence put before him it is the judge's duty to decide it even if it appears difficult. I cannot see that any advantage would be gained or purpose served by allowing the issue to go to trial. Very difficult points of law are decided from time to time in chambers without disadvantage to the parties. Once the judge has made a decision then, as far as he is concerned, it is a plain case and it is he who must decide at that stage whether it is a plain case or not. As has been pointed out by Luckhoo, P. in his judgment, the point of view here expressed is supported by the passage cited by him from the judgment of Lord Greene, M.R. in Cow v. Casey /1949/1 K.B. 474 at 481. I think it is also supported by a statement by Russell, L.J. in Biggs v Boyd Gibbins Ltd. /1971/1 W.L.R. 913, a case in which the plaintiff applied for summary judgment in an action for specific performance of an agreement by the defendant to purchase land from the plaintiff. At p.915 Russell, L.J. said:

"With the matter being dealt with under Ord.86, it is, I think, right to say that

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an order should be made only if the judge thinks it is a plain case and ought not therefore to be tried. Speaking for myself, I should have thought that it would be sensible that if you have got simply a short matter of construction, with a few documents, the judge on this summary application should simply decide what is in his judgment the true construction. There could be no reason to go formally to trial (except that you might possibly get another judge) where no further facts could emerge which would throw any light at all upon the letters that have to be construed."

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A short matter of construction is not necessarily the same thing as a simple or easy matter of construction. It is also to be noted that in referring to the reason for going formally to trial Russell, L.J. spoke of the emergence of facts at the trial which could throw light upon the documents to be construed.

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In the case under consideration it was not suggested that there were any facts which could emerge at a trial which could assist in the construction of s.3(2) of the Act of 1968. It was conceded that the determination of the question whether or not the defendant had an arguable defence depended solely on whether the meaning of the words "transfer.....effected" was plain. Zacca, J. said that he was satisfied that the only possible interpretation of s.3(2) is that a transfer is effected when it is registered. He said that he had no doubt about it. The learned judge was here saying, in effect, that the interpretation of the provision is plain. In other words, it was a plain case. We had, therefore, on appeal to decide whether the judge was right. It was contended that we could not say that this was a plain case because the legislation is, on the face of it, extremely difficult to interpret; that its proper interpretation raises questions as to equities and extracting from the language used the intention of the legislature in regarding to competing claims. A full and very helpful argument was, nevertheless, addressed to us on behalf of each party on the proper interpretation of the provision.

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The defendant company sought to contend, in answer to the plaintiff's claim, that a transfer of the lands in question had already been effected as a result of the agreement made in 1968 between the company and North Western Enterprises Ltd. and that this transfer was protected by the saving provision in sub-s.(2) of s.3. It was submitted before us for the plaintiff that the saving provision is limited to "transactions" which resulted in the contracts validated by s.3(1) of the Act of 1968 and is intended to ensure that transfers or conveyances effected before sanctions of sub-divisions had been obtained are treated as effective (see latter part of s.9A(1) in s.3(1) of the Act). Such an interpretation would exclude the transaction and the alleged transfer between the defendant company and North Western Enterprises Ltd. It was not disputed that the saving provision is framed in wide terms but it was submitted that in order to arrive at the meaning of "transactions" the word must be looked at in its context and, in particular, in the light of the mischief which the legislature aimed at preventing. Looked at in this way, it was said, no convincing reason has been advanced why the word should be given the wider meaning contended. In my opinion, the word is used here in its widest sense and it is for the plaintiff to show that it is used in the narrow sense contended by her. I am not convinced by the argument that it has any such restricted meaning. There is nothing in the context in which it is used which, in my view, compels such a conclusion. If such a restricted meaning was intended I would have expected the saving provision to be framed so as to make specific reference to the prohibition contained in the latter part of s.9A(1). If the interpretation put upon "transfer.....effected" by Zacca, J. is right then it is clear that the legislature intended to protect legal titles to land which resulted from the contracts of sale referred to in s.3(2). In my opinion, the transaction with North Western Enterprises Ltd. is within the provisions of s.3(2).

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Now as to the meaning of "transfer.....effected". These words have no defined or legally decided meaning and must, therefore, be interpreted in the ordinary way. It is the

meaning of the word "effected" which needs to be considered. It must be given its ordinary or dictionary meaning. In the Oxford English Dictionary the verb "effect" is defined thus: "To bring about (an event, a result); to accomplish (an intention, a desire)." In Webster's International Dictionary the definition is: "To bring to pass, to execute, to enforce, to achieve; to accomplish." In my opinion, it is in these senses that the word is used in both places where it occurs in s.3(2). Legally, land cannot be said to be transferred or conveyed until the legal estate passes. For example, when it is stated in s.9A (1) that "..... such contract shall not be executed by the transfer or conveyance of the land concerned ....." this can only refer to the transfer or conveyance of the legal estate in the land. No lawyer refers to the passing of an equitable estate or interest in land from one person to another simply as a transfer or conveyance of land. A transfer or conveyance of land can only be brought about or achieved or accomplished by the passing of the legal estate - in the case of registered land by registration and in the case of unregistered land by delivery of an executed conveyance. So that the plain meaning of "transfer.....effected" in the case of registered land is "transfer..... registered."

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There is another, and perhaps more accurate, way of looking at the matter with the same result. The word "effected" in question was used in the sub-section in order to relate the words "transfer or conveyance of land" which precede it to the contracts of sale specified in the words which follow it. So the legally accepted meaning of the words "transfer or conveyance of land" is not affected by the word "effected." They do not depend on that word to give them meaning. The words bear the same meaning that they do in s.9A(1). The point I wish to make is made clear if the relevant words in s.3(2) are read with the addition of the words "which is" as follows: "..... the amendment effected in the principal law by virtue of this section of the Act shall not operate so as to nullify or affect any transfer or conveyance of land which is effected pursuant to any contract of sale....." All that is meant is that the amendment shall not operate so as to nullify or affect the passing of any legal estate

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in land which is brought about or accomplished pursuant to any contract of sale made prior to the date of the enactment of the Act. It is in this same way that the word "effected" is employed earlier in the sub-section in relation to "amendment". It is conceded that the legal estate in the lands had not passed from the defendant to North Western Enterprises Ltd. at the time when the application was heard by Zacca, J. The saving provision did not, therefore, help the defendant.

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With all due respect to the able argument of Mr. Blake, it must follow from the views I have formed and expressed above that the words in question are not capable of bearing the alternative meaning for which he contended. In my judgment, the meaning of the words is perfectly clear. It was a plain case and it was, therefore, competent for Zacca, J. to give the plaintiff leave to sign summary judgment.

Though the point was taken in the grounds of appeal, the question of the exercise of the judge's discretion in decreeing specific performance was not challenged on appeal. The question whether specific performance or damages was the proper remedy in the circumstances was raised before the learned judge. In granting the plaintiff's application he must be taken to have exercised his discretion unless the contrary is shown. It was not suggested before us that there was any triable issue on this aspect of the case. S.86A of the Civil Procedure Code, which allows summary judgment to be entered in a claim for specific performance, would serve little purpose if it is to be said that there is a triable issue whether specific performance or damages is the proper remedy. In fact, s.86A allows an application for summary judgment to be made even where there is an alternative claim for damages and the defendant can resist the application only if he satisfies the judge that "he has a good defence on the merits or discloses facts sufficient, in the opinion of the Court or Judge, to entitle him to defend." There was no material in the record on which the judge could have judicially exercised his discretion against the plaintiff by refusing her application for specific performance.

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It is for the above reasons that I agreed that the appeal should be dismissed.

LUCKHOO, Ag. P.:

In the result by a majority the Appeal is dismissed with costs to the respondent and the order of the trial judge is affirmed.

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No.36

ORDER ALLOWING FINAL LEAVE TO APPEAL  
TO HER MAJESTY IN COUNCIL

Order  
allowing  
final leave  
to appeal to  
Her Majesty  
in Council

11th April  
1973

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 37 OF 1968

10 BETWEEN ROSE HALL LIMITED

DEFENDANT/  
APPELLANT

A N D ELIZABETH LOVEJOY REEVES

PLAINTIFF/  
RESPONDENT

BEFORE LUCKHOO, President, SMITH J.A. &  
GRAHAM-PERKINS J.A.

THE 11th DAY OF APRIL, 1973

20 The Application on behalf of the Defendant/  
Appellant for Final Leave to Appeal to Her Majesty  
in Council coming on for hearing this day and after  
hearing Mr. R. H. Williams, Q.C. on behalf of the  
Defendant/Appellant and Mr. Richard Mahfood, Q.C.  
and Mr. R.N.A. Henriques of Counsel on behalf of  
the Plaintiff/Respondent and on referring to the  
Affidavit of Mr. John Colin Edwards, Attorney-at-  
Law of the Supreme Court of Judicature of Jamaica  
sworn to on the 28th day of August, 1972 and filed  
herein IT IS HEREBY ORDERED that Final Leave to  
Appeal to Her Majesty in Council be granted AND  
30 THAT the time for despatching the Record to  
England be extended to Monday, 30th April, 1973  
AND THAT the costs of this Application be costs in  
the cause.

BY THE COURT

R E G I S T R A R

This Order is entered by Clinton Hart & Co. of  
58 Duke Street, Kingston, Attorneys-at-Law for and  
on behalf of the Defendant/Appellant herein.

## Exhibits

"A"Agreement  
for Sale4th April  
1961E X H I B I T S"A" - Agreement for Sale

JAMAICA S.S.

MEMORANDUM OF SALE AND PURCHASE made  
this 4th day of April One thousand  
nine hundred and sixty-one

1. VENDOR: ROSE HALL LIMITED in care of Kerr-Jarrett and Company, 1 King Street, P.O. Box 65, Montego Bay in the Parish of Saint James 10
2. PURCHASER: ELIZABETH LOVEJOY REEVES the wife of Rosser Reeves No. 4 Cedar Island, Larchmont, New York (c/o Ted Bates 666 5th Avenue, New York)
3. PROPERTY SOLD: ALL THOSE two parcels of land part of the Estates situate in the Parish of Saint James (hereinafter referred to as "the Property") referred to as Block C and Block D delineated and outlined in red on the Plan No. F.51 signed by or on behalf of the parties hereto and being the land butting Northerly on the sea Southerly on the proposed Main Road from Montego Bay to Falmouth, Easterly on the centre line of a gully and Westerly on Block B being the land reserved by the Vendors for a beach club and for bathing purposes 20
4. SALE PRICE FIFTY THOUSAND POUNDS AGREED 30
5. HOW PAYABLE: The purchase money shall be paid in the following manner:
  - (a) on the signing hereof Twelve Thousand Five Hundred Pounds by way of deposit
  - (b) a further Twelve Thousand Five Hundred Pounds three years from the date hereof or at such time as the

Vendor can lawfully tender a transfer of the Property (including the existing main road reservation) (whichever is the later) and

(c) the balance not later than ten years from the date hereof

Exhibits

—  
"A"

Agreement  
for Sale

4th April  
1961

(continued)

6. POSSESSION On the execution hereof by both parties

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hereto and payment of the deposit the Vendor will deliver possession of the Property save the portion thereof the title where to is now vested in the Government of Jamaica, being the existing main road reservation, possession whereof will be granted as soon as is practicable and the Vendor HEREBY COVENANTS to take such action as is necessary to expedite the same. Interest at the rate of 6% per annum is to be paid on the balance of the unpaid purchase money calculated from the date of possession and is payable half yearly on the fifteenth days of March and September in each and every year (the first payment to be apportioned). The Vendor shall nevertheless be entitled to enter the Property for the purpose of cultivating, irrigating, reaping and removing the sugar cane now or hereafter growing thereon, and for replanting any part of the Property whereon cane is growing, until such time as

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(a) the purchase price is paid in full, or, in respect of either Block C or Block D, the Vendor delivers a transfer as to that Block, or

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(b) the Purchaser has given to the Vendor thirty days notice which however shall not expire until the last day of June next after the service thereof

7. ENCUMBRANCES  
& RESERVATIONS

Subject to:

## Exhibits

"A"Agreement  
for Sale4th April  
1961

(continued)

(a) existing easements for the right  
for water to drain along existing  
channels(b) the special conditions mentioned  
below(c) the covenants and stipulations  
in the Schedule hereto(d) the stipulations imposed by the  
Parish Council in granting sub-  
division approval and if any term of  
the said approval is not acceptable  
to the Vendor this agreement shall  
be null and void and the Vendor shall  
only be liable to repay all moneys  
paid hereunder but not interest  
thereon or any other compensation  
or damages whatsoever

10

8. COMPLETION; The balance of the purchase money shall be paid as hereinbefore provided but any part thereof may be prepaid without penalty or interest in lieu of notice. Immediately after payment of the purchase price in full the Vendor will deliver a transfer of the Property in fee simple subject only to existing easements (if any) and to the covenants and stipulations hereinbefore referred to (in 7c) and (d) (excluding however the said main road reservation until three years from the date hereof) executed by all necessary parties except the Purchaser her nominees or assignees. If the Purchaser neglects or fails to pay any instalments of purchase money as herein provided or to observe any other term hereof the Vendor may by notice sent by post to the Purchaser cancel this contract without previously tendering any Transfer and the Vendor shall be entitled to retain all payments made by the Purchaser

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9. TAXES AND WATER RATES:	To be paid by the Vendor until the purchase price of the Property is paid in full and if paid in full in respect of any part thereof then the Purchaser shall pay the tax and rates in respect of that part only	Exhibits — "A" Agreement for Sale 4th April 1961 (continued)
10	10. COSTS OF TITLE:	The Purchaser shall pay to the Vendor half the stamp duty and registration fees of the Transfer and half the cost of issuing a new title in the name of the Purchaser with the balance of the purchase money but each party shall bear her or its own Solicitor's costs.
20	11. SPECIAL CONDITIONS	(a) All stipulations herein as to time which are not so can be made of the essence of the contract by either party hereto giving the other four weeks notice in writing after performance or observance is four weeks overdue
30		(b) The Vendor will obtain the consent of the Exchange Control Authority so that as far as may be permitted all dollars introduced by the Purchaser in payment of the purchase money may be repatriated
30		(c) Until payment of the purchase price in full for either Block C or Block D or both, the Purchaser as to the Block which has not been fully paid for
40		(i) will keep the Property reasonably clean and free from weeds and other noxious growths and in good heart and condition save mangroves and the swamps now existing thereon
40		(ii) at her expense will comply with all the requirements of any public, parochial or sanitary authority, and
		(iii) will not let lease rent or

## Exhibits

—  
"A"

Agreement  
for Sale

4th April  
1961

(continued)

otherwise dispose of or part with the possession of the Property or any part thereof without the Vendor's written consent

(d) Any notice required to be given to or served on the Vendor or the Purchaser shall be deemed served seven days after the time of posting by registered post addressed to the Vendor at 1 King Street, Montego Bay and the Borrower in care of Messrs. Nation and Nation, Union Street, Montego Bay

10

(e) The Purchaser shall be released from all personal liability hereunder if she assigns the contract and procures that such assignee undertakes personal liability in her place or if this contract is cancelled under Clause 8 hereof, or if the Vendor has the right to cancel the same under Clause 8 hereof

20

(f) This Contract may be rescinded and the Vendor shall repay all monies paid to that date but without any further liability for compensation by either party hereto if the Vendor is unable to transfer to the Purchaser the right of way to the existing main road and the Vendor hereby warrants that the government of Jamaica is obliged to transfer the said right of way on completion of the proposed new main road and that the monies required for the construction of such road has already been appropriated for that purpose by the Vendor

30

(g) The Vendor will obtain the consent of the registered proprietors of any mortgage now affecting the Property (in such a manner as to be binding on their transferees and assignees) to the purchase price herein, and the terms of payment thereof and to the release of the Property from any such

40

mortgage upon payment to the Mortgagee by the Vendor of half the purchase price

Exhibits

—  
"A"

(h) At any time after the payment of not less than sixty-two and a half percent of the total purchase money the Vendors will deliver a transfer executed as aforesaid for either Block C or Block D (at the Purchaser's option)

Agreement  
for Sale

4th April  
1961

(continued)

10

S C H E D U L E

1. Covenants by the Purchaser for the Purchaser and the Purchaser's personal representatives so as to bind as far as the Law allows the registered proprietor or proprietors and occupier or occupiers for the time being of the Property or any part thereof for all time and so that the benefit thereof is annexed to and runs with any part or parts of the remainder of the Rose Hall Estates which is or are capable of being benefited hereby (hereinafter collectively referred to as "the Protected Land") as follows:

20

(a) Any metallic material used in the erection of any building or structure on the Property shall be kept painted so that the same shall not reflect the rays of the sun

(b) (i) No building or other improvement shall be placed on or made to the Property which is not on the site approved in writing by the Vendor and which is not in accordance with the plans, specifications and elevations of the buildings similarly approved and the Purchaser shall submit all plans and specifications for any proposed construction, improvement, alteration or addition and obtain the Vendor's written consent thereto before commencing any work thereon

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(ii) The Vendor will proceed promptly to consider all plans and specifications submitted and if the same are not approved or disapproved within six weeks after they are received by the Vendor they shall be deemed approved

40

(iii) Any objections by the Vendor to the said plans, specifications and elevations shall be

Exhibits

"A"

Agreement  
for Sale  
4th April  
1961  
(continued)

stated in writing and shall state the changes to be made to obtain the Vendor's approval

(c) No livestock or poultry shall be kept on the Property and the same shall be kept free of weeds or any unsightly growth or object save the mangroves and the swamps now situate thereon

(d) Nothing shall be done which will alter the existing foreshore, beach or waterline, now or formerly a part of the Protected Land, or affect the depth and condition of the said land adjacent thereto, without the consent of the Beach Control Authority and prior notice thereof to the Vendor

10

(e) To observe the terms imposed by the Beach Control Authority in granting permission for the erection of groynes along the foreshore of the Property

(f) Failure to enforce any restriction or stipulation herein however long continued shall be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement

20

2. The Vendor or the Vendor's successors in title shall not be required to impose similar or any covenants on any sale or other disposition of any part of the Protected Land save the land on the western boundary of the Property and now referred to in the plan aforesaid as Block B

3. The Vendor may from time to time vary or release any covenant whatsoever affecting the Property or the Protected Land or any part thereof and the said right shall be exercisable by the Vendor or those deriving title under the Vendor to the Protected Land by writing not under seal except that on a sale by the Vendor the right shall be exercisable by a purchaser from the Vendor only if expressly assigned

30

(Sgd.) F.M. Kerr-Jarrett  
ROSE HALL LIMITED  
Witness: (Sgd.) .....?.....

40

(Sgd.) ELIZABETH LOVEJOY REEVES  
Purchaser  
Witness: Charlotte Kieley  
.....

Exhibits  
—

"B" - LETTER, MINISTRY OF FINANCE  
TO KERR-JARRETT & CO.

MINISTRY OF FINANCE,  
EXCHANGE CONTROL SECTION,  
131 TOWER STREET,  
P.O. BOX 471,  
KINGSTON, JAMAICA

5th January, 1962

"B"

Letter,  
Ministry of  
Finance to  
Kerr-Jarrett  
& Co.

5th January  
1962

Messrs. Kerr-Jarrett & Co.,  
P.O. Box 65,  
1 King Street,  
Montego Bay.

Dear Sirs,

Rose Hall to Reeves

Referring to your letter dated 25th November, 1961, I am directed to inform you that approval has been granted for the transfer from Rose Hall Limited to Elizabeth Lovejoy Reeves of 4 Cedar Island, Larchmont, N.Y., U.S.A., of Blocks C and D part of the Rose Hall waterfront, comprised in Volume 962 Folio 387 - and not Volume 954 Folio 25 as stated in your letter of the 28th September, 1961 - for £50,000, on the clear understanding that the purchase price is paid in U.S. currency and/or External Sterling and banker's Certificate(s) submitted to this office in confirmation.

2. The approval granted in my letter of the 5th October, 1961, is hereby superceded.

Yours faithfully,

(Sgd.) G. While

for Financial Secretary.

Exhibits

          
"C"

"C" - LETTER, DUNN, COX & ORRETT  
TO B.C. O'B. NATION

16th March, 1964

Letter, Dunn,  
Cox & Orrett  
to BC. O'B  
Nation  
16th March  
1964

B.C.O'B. Nation Esq.,  
Messrs. Nation and Nation,  
Solicitors,  
Montego Bay.

Dear Brian,

Sale - Rose Hall Ltd. to Reeves,  
Elizabeth

10

You will remember that a further £12,500 is payable three years from the date of the contract, 4th April this year - see Clause 5(d) of the contract. Rose Hall, must, at the same time, be able to tender a transfer of the existing main road reservation. We understand from the government that they registered their title, and should be therefore in a position to give title to us. However, it does not look as if, due to gross delays in the completion of the new main road, that Rose Hall will be in a position to hand over the road to the government and exchange titles exactly on April 4th. I do not think, however, that this process will be delayed very much beyond the 4th April, so I am writing to ask you to alert Rosser Reeves.

20

In the meantime we have obtained subdivision approval, and I enclose herewith a copy of the Parish Council Resolution. Unfortunately I only have the copy of the Plan with the Parish Council approval, so I am getting you another one.

30

Yours sincerely,

(Sgd.)           ?

c.c. Rose Hall Ltd.

"D" - LETTER, DUNN, COX & ORRETT  
TO B.C. O'B. NATION

Exhibits

"D"

15th May 1964

B.C.O'B. Nation Esq.,  
Messrs. Nation & Nation,  
Solicitors,  
MONTEGO BAY.

Letter, Dunn  
Cox & Orrett  
to B.C. O'B.  
Nation

15th May  
1964

Dear Brian,

Sale - Rose Hall to Mrs. Rosser Reeves

10

I refer you to my letter of the 16th March enclosing a copy of the Parish Council Resolution approving the sub-division. I am now sending with this letter a print of Plan Examination No. 70103. The land to be eventually transferred to Rosser's wife are Lots 2, 2A, 2B, 3, 3A, 3B, 3C and 3D.

20

Since I last wrote I have got from the Registrar of Titles separate Titles for the new Main Road, the Government has got out their Title for the existing Main Road, and I have, at Rose Hall's expense, obtained Title for the Parish Council to Lot 3A which is the existing Parochial Road that will be abandoned. I have sent a draft Transfer to the Crown Solicitor and we should be in a position to exchange Titles very shortly.

To enable you to follow the parish Council Resolution you will need the following information:

30

1. The point marked "X" is the boundary between Lots 1B and 2B on the new Main Road.

2. Point "Y" is on the new Main Road at a point  $9\frac{1}{2}$  inches on the Plan from the boundary between Lots 3 and 2B.

3. "Z" is of course the point where the existing Parochial Road meets the proposed new Main Road, i.e., the southern boundary of Lot 3A.

Phone return Ex No. 70103

(Sgd.) ?

K-J:McG.

Enclo. 1

c.c. S.J. Winder Es

Exhibits

"E"

"E" - LETTER, ROSE HALL (Developments)  
LTD. to P. KERR-JARRETT

19th August, 1968

Letter,  
Rose Hall  
(Developments)  
Ltd. to P.  
Kerr-Jarrett

19th August  
1968

Mr. P. Kerr-Jarrett,  
Dunn, Cox & Orrett,  
1 King Street,  
MONTEGO BAY.

Dear Peter,

re: Parcels C & D, The Coves,  
Rose Hall Estate

10

We acknowledge receipt of your recent letter concerning your conversations with Mr. Nation relating to the above referenced properties.

We have sold our interests in these properties and are unable to transfer title to Mrs. Reeves but we are prepared to return any payments made on account with interest at seven percent from the date received.

Will you please instruct any other officers, employees or agents of Rose Hall not to accept payment for these properties by Mr. Nation, his client or their agents in any form whatsoever. We would appreciate receiving your written confirmation of these instructions.

20

Sincerely,

(Sgd. ) William H. Sells

William H. Sells.

WHS/ecn  
Chron.  
file

30



"F" - LETTER, NATION, LORD & deLISSER  
to DUNN, COX & ORRETT

P.O. Box 334,  
MONTEGO BAY,  
JAMAICA.

26th August, 1968

Messrs. Dunn, Cox & Orrett,  
Solicitors,  
MONTEGO BAY.

Exhibits

L "F"

Letter,  
Nation, Lord  
& deLisser to  
Dunn, Cox &  
Orrett

26th August  
1968

10 Dear Sirs,

re Agreement of Sale and Purchase -  
Rose Hall Limited with Mrs. E.L. Reeves  
Lands part of Rose Hall, Saint James

We have received from you a copy of the letter of 19th inst. addressed to Mr. Peter Kerr-Jarrett and signed by William H. Sells re the above.

20 We note that Rose Hall Limited has (notwithstanding the above Contract) sold its interest in the lands the subject of the above Contract and are therefore unable to transfer title to Mrs. Reeves.

30 We are forced to assume that Mr. Sells in stating that the lands have been "sold" must have only meant that a Contract purporting to sell all the lands has been executed because on the 11th December 1967 on behalf of Mrs. Reeves we entered a Caveat against all the titles parts of which constituted the subject matter of our client's contract and a search made at the Office of Titles on 22nd Inst. not only confirmed that the Caveat was still subsisting but disclosed that no Transfers relating to such Titles had been registered or had been attempted to be registered since the lodging of the Caveat.

40 The last paragraph of that letter instructs you to ensure that no officer, employee or agent of Rose Hall Limited will accept payment in relation to the purchase of the lands. We assume that you are satisfied as to the authority of Mr. Sells to give you these instructions as otherwise you would not have sent us the copy of his letter.

## Exhibits

—  
"E"

Letter,  
Nation, Lord  
& deLisser to  
Dunn, Cox &  
Orrett

26th August  
1968  
(continued)

Under the Agreement of Sale our client is entitled at any time to pay the balance of the purchase money "without penalty or interest in lieu of notice" and further she must then pay one-half the Stamp Duty and registration fees of the Transfer and half the cost of issuing a new Title in her name.

In the light of the last paragraph of the letter referred to, it is not now necessary to tender the amounts payable as above although Mrs. Reeves now wishes to pay the balance of the purchase money with the attendant interest and costs. We are however to say that we are now in a position to send you for Rose Hall Limited an amount of £27,095.1.5 to cover:

Balance purchase money	...	£25,000. 0. 0.	
Interest to 31st inst.	...	1,446. 8. 3.	
Half Stamp Duty	...	613. 5. 8.	
Half registration fee (taking into account that 4 Certificates of Title are involved) inclusive of costs of new Certificate with Plan	...	<u>35. 7. 6.</u>	20
		£27,095. 1. 5	

On your informing us in writing that Rose Hall Limited is now prepared to accept this amount we shall immediately cause a Banker's cheque to be sent to you in respect of the above amount. Unless however we are so informed by you on or before 31st inst. our instructions are to file the necessary legal proceedings in the High Court seeking an Order for specific performance of our Client's Contract.

In this respect we consider it our duty to inform you that Mrs. Reeves is presently negotiating to sell the lands at a price of £1,400,000.00. Just as soon as this Contract has been in fact executed by Mrs. Reeves and her Purchaser we shall notify you accordingly. We wish to make it abundantly clear that should this latter Contract materialise and if by reason of your client's refusal to implement the existing Agreement of Sale with our client she is unable to complete

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this second Contract, Mrs. Reeves will seek to recover damages for her loss of bargain.

We are enclosing a copy of this letter which we ask that you be good enough to sign and return to us as an indication of your receipt of the original.

Yours faithfully,  
NATION, LORD & deLISSER

per: B.C. N.

Exhibits

          
"E"

Letter,  
Nation, Lord  
& deLisser to  
Dunn, Cox &  
Orrett

26th August  
1968  
(continued)

10 BCN:jc  
Encl:

"A" - DRAFT DEFENCE AND COUNTERCLAIM

Suit No. C.L.716 of 1968

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT OF JUSTICE

COMMON LAW

BETWEEN ELIZABETH LOVEJOY REEVES PLAINTIFF

A N D ROSE HALL LIMITED DEFENDANT

"A"

Draft Defence  
and Counter-  
claim

20 1. Subject to paragraph 4 hereof the Defendant admits paragraphs 1, 2 and 3 of the Statement of Claim but denies that the contents of the said agreement are fully set forth in the Statement of Claim and the Defendant will refer at the trial to the said agreement for its full terms and effects.

2. Save that the Defendant admits that the Plaintiff has paid the Defendant the sum of £25,000, paragraph 4 of the Statement of Claim is not admitted.

30 3. Paragraph 6 of the Statement of Claim is not admitted.

4. The alleged agreement was for the sale of the

## Exhibits

—  
"A"

Draft Defence  
and Counter-  
claim  
(continued)

said two parcels of land part of the Rose Hall Estate and was made prior to the approval of the subdivision of the said estates by the St. James Parish Council. In the premises the alleged agreement was entered into in breach of sections 4, 9a and 9b of the Local Improvement Law Cap.227 and was illegal, void and unenforceable.

5. Paragraph 7 of the Statement of Claim is admitted. 10
6. By an agreement in writing dated 25th May, 1968 the Defendant (as it was entitled to do) agreed to sell the said two parcels of land to North Western Enterprises Limited for the sum of £65,000.
7. Pursuant to the said agreement referred to in paragraph 6 hereof by transfer of land No. 243094 and dated 12th September 1968, the Defendant transferred to the said North Western Enterprises Limited all its estate and interest in the said two parcels of land and the same was lodged at the Office of Titles on the 13th September 1968. 20
8. In the premises the Defendant will contend that the sale of the said two parcels of land to the said North Western Enterprises, Ltd. was and is good and valid and the subsequent transfer thereof duly effected and the Defendant will rely on the provisions of the Local Improvements (Amendment) Act, Act 35 of 1968 - Section 3, Subsection 2. 30
9. The Defendant denies that the Plaintiff is entitled to the relief claimed.
10. Save as is hereinbefore expressly admitted, the Defendant denies each and every allegation contained in the Statement of Claim as if the same were herein specifically set forth and traversed seriatim.

COUNTERCLAIM

11. The Defendant repeats paragraphs 1, 2, and 4 to 8 inclusive of the defence herein. 40

12. And the Defendant counterclaims against the Plaintiff for:

Exhibits

"A"

Draft Defence and Counter-claim (continued)

(a) A declaration that the agreement in writing dated the 25th May 1968 and made between the Defendant and North Western Enterprises Limited is good and valid and the subsequent transfer thereof of land No.203094 dated 12th September 1962 was duly effected,

10 (b) Possession of the said two parcels of land,

(c) An order that the Registrar of Titles do register the said Transfer No. 203094 in the Register Book of Titles,

(d) Further or other relief.

Settled:

RONALD H. WILLIAMS

4th October, 1968.

20 "HCH1" - DRAFT AGREEMENT - Elizabeth Lovejoy Reeves and Rose Hall (Developments) Ltd.

"HCH1" Draft Agreement Elizabeth Lovejoy Reeves and Rose Hall (Developments) Ltd.

CLINTON HART & CO.'S DRAFT 15th January, 1968

MEMORANDUM made the \_\_\_\_\_ day of \_\_\_\_\_ 1968  
B E T W E E N ELIZABETH LOVEJOY REEVES, the wife of Rosser Reeves, of No.4 Cedar Island, Larchmount, New York, United States of America (hereinafter called "Mrs. Reeves") of the ONE PART and ROSE HALL (DEVELOPMENTS) LIMITED a company incorporated under the Law of Jamaica with registered office at Rose Hall in the Parish of Saint James (hereinafter called "the Company") of the OTHER PART

30 W H E R E A S :

1. By Memorandum dated the 4th day of April 1961

## Exhibits

"HCH1"

Draft  
 Agreement  
 Elizabeth  
 Lovejoy  
 Reeves and  
 Rose Hall  
 (Developments)  
 Ltd.  
 (continued)

(hereinafter called "the Agreement") ROSE HALL LIMITED a company incorporated under the Companies Law of the Cayman Islands and having its registered office at George Town, Grand Cayman (hereinafter called "Rose Hall") agreed to sell and Mrs. Reeves to purchase the lands therein described as ALL THOSE two parcels of land parts of Rose Hall Estates in the Parish of Saint James referred to as Blocks C and D on the Plan numbered F.51 at the price of FIFTY THOUSAND POUNDS

10

2. The sum of TWENTY FIVE THOUSAND POUNDS part of the said purchase price having been paid by Mrs. Reeves to Rose Hall, she is now desirous of selling to the Company all her estate and interest in the said lands which the Company has agreed to purchase at the price and on the terms and stipulations hereinafter stated.

NOW THIS MEMORANDUM WITNESSETH as follows:-

1. IN CONSIDERATION of the sum of \$365,000 U.S. paid by the Company to Mrs. Reeves in manner and at the times hereinafter appearing and of the covenant of Mrs. Reeves hereinafter contained, the Company will purchase and Mrs. Reeves will sell ALL THAT the estate and interest of Mrs. Reeves in the said lands both Mrs. Reeves and Rose Hall being hereby relieved of any further obligations arising under the Agreement which is hereby agreed to be forthwith cancelled and of no further force and effect.

20

2. The said purchase price shall be paid in manner following that is to say,

30

a) By payment of SEVENTY THREE THOUSAND DOLLARS (U.S.) on the execution hereof by the parties; and

b) By FOUR equal annual instalments of SEVENTY THREE THOUSAND DOLLARS (U.S.) each (the first of such instalments to be payable on the anniversary of the initial payment already referred to) to be secured in manner hereinafter appearing.

3. The payment of the instalments referred to in Clause 2(b) above shall be secured by the granting by the Company to Mrs. Reeves of FOUR Promissory Notes of SEVENTY THREE THOUSAND DOLLARS (U.S.) each, each bearing interest at FOUR PER CENT and each to

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respectively fall due on the first, second, third and fourth anniversary of the initial payment hereinbefore referred to.

Exhibits

—  
"HCH1"

4. The said Promissory Notes shall be in the form annexed hereto and marked with the letter "A" and all costs in relation thereto shall be borne by Mrs. Reeves.

Draft  
Agreement  
Elizabeth  
Lovejoy  
Reeves and  
Rose Hall  
(Developments)  
Ltd.  
(continued)

10

5. Mrs. Reeves hereby covenants with the Company that she will not seek to embarrass or defame the Company or anyone connected therewith in any way but will whenever possible promote the best interests of the Company or cause this to be done. Any breach by Mrs. Reeves of this covenant shall forthwith entitle the Company to cancel this agreement and to the return of any moneys paid hereunder.

20

6. All notices required to be served hereunder shall be in writing and shall be deemed to be properly and effectually served on either of the parties hereto if sent by registered airmail address in the case of Mrs. Reeves to her address aforesaid and in the case of the Company to its address aforesaid and any notice so sent shall be deemed to be delivered in due course of registered airmail.

7. Where the context so permits the expression "the Company" shall include its successors and assigns and the expression "Mrs. Reeves" shall include her personal representatives and assigns.

30

8. This Agreement shall be subject to the approval of the Bank of Jamaica Exchange Control Section

IN WITNESS WHEREOF Mrs. Reeves hath hereunto set her hand and the Company has caused its Common Seal to be hereunto affixed in manner hereinafter appearing the day and year first hereinbefore written

PROMISSORY NOTE

W H E R E A S :

40

1. By Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ 1968 and made BETWEEN ROSE HALL (DEVELOPMENTS)

## Exhibits

"HCH1"

Draft  
 Agreement  
 Elizabeth  
 Lovejoy  
 Reeves and  
 Rose Hall  
 (Developments)  
 Ltd.  
 (continued)

LIMITED a company incorporated under the Laws of Jamaica with registered office at Rose Hall in the Parish of St. James (hereinafter called 'the Company') of the ONE PART and ELIZABETH LOVEJOY REEVES the wife of Rosser Reeves of No.4 Cedar Island, Larchmount, New York, United States of America (hereinafter called 'Mrs. Reeves') of the OTHER PART the Company has agreed to sell and Mrs. Reeves to purchase ALL THOSE two parcels of land parts of Rose Hall Estates in the Parish of Saint James referred to as Block C and Block D on the Plan numbered F.51 at the price of FIFTY THOUSAND POUNDS

2. The said sum of FIFTY THOUSAND POUNDS is to be payable -
- i) As to U.S. \$73,000 on the signing of the said agreement,
- (ii) as to the balance of U.S. \$292,000 in FOUR equal annual instalments payable on the \_\_\_\_\_ day of \_\_\_\_\_ 1969, 1970, 1971 and 1972 respectively
- iii) Each of the four annual payments referred to in Clause 2(ii) above is to be secured by a Promissory Note bearing interest at the rate of FOUR PER CENTUM per annum.
3. John W. Rollins of Wilmington, Delaware, U.S.A. (hereinafter called 'the Guarantor') has agreed to guarantee the obligations of the Company under the aforesaid agreement and for this purpose has joined in this Promissory Note as is signified by its execution hereof.

IN PURSUANCE of the foregoing -

1. The Company HEREBY PROMISES to pay to Mrs. Reeves on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ the sum of SEVENTY THREE THOUSAND DOLLARS (U.S.) TOGETHER with interest thereon at FOUR PER CENTUM per annum calculated from the \_\_\_\_\_ day of \_\_\_\_\_ 1968 for value received.
2. It is HEREBY MUTUALLY DECLARED AND AGREED that this Note shall not constitute a charge



on or over those parcels of land hereinbefore referred to or on or over any other assets of the Company or the Guarantor.

Exhibits

—  
"HCH1"

3. The Guarantor HEREBY COVENANTS with Mrs. Reeves that in the event of the Company being in breach of its obligation hereunder that he will within twenty-one days of written demand being made by Mrs. Reeves comply with the said obligation and pay the amount due hereunder to the intent that the Guarantor shall be as fully liable to perform and observe the obligation contained herein as though it were the principal debtor. The liability of the Guarantor under this Note shall not be impaired or discharged by reason of any time or other indulgence granted by Mrs. Reeves to the Company or by reason of any arrangement entered into or composition accepted by Mrs. Reeves.

Draft  
Agreement  
Elizabeth  
Lovejoy  
Reeves and  
Rose Hall  
(Developments)  
Ltd.  
(continued)

10

20

THE COMMON SEAL of ROSE HALL )  
(DEVELOPMENTS) LIMITED was )  
hereunto affixed by Order of )  
the Board of Directors and )  
these presents executed by )  
  
and )  
In the presence of: )

SIGNED by the said John W. )  
Rollins In the presence of: )

Exhibits

        
"HCH2"

Letter, Price  
Waterhouse  
& Co. to  
Rollins  
Jamaica Ltd.

29th January  
1968

"HCH2" - LETTER, PRICE WATERHOUSE  
& CO. TO ROLLINS JAMAICA LIMITED

PRICE WATERHOUSE & CO.

INDEPENDENCE MALL WEST  
PHILADELPHIA 19106

January 29, 1968

Mr. William H. Sells, Executive  
Vice President  
Rollins Jamaica Ltd.,  
2401 Pennsylvania Avenue  
Wilmington, Delaware

10

Dear Mr. Sells:

As requested, we have reviewed the draft dated January 15, 1968 (prepared by Clinton Hart & Co., solicitors) between Elizabeth Lovejoy Reeves and Rose Hall (Developments) Limited. This memorandum is in connection with a memorandum of sale and purchase dated April 4, 1961 between Rose Hall Limited and Elizabeth Lovejoy Reeves.

20

The draft memorandum provides for the sale by Mrs. Reeves of two parcels of land parts of Rose Hall Estates in the parish of St. James for the sum of \$365,000 U.S. We believe that Mrs. Reeves should be entitled to report the gain on this sale as a capital gain for U.S. income tax purposes.

Yours very truly,

(Sgd.) John P. Kelsey

John P. Kelsey

30

"HCH3" - LETTER, CLINTON HART & CO.  
to BANK OF JAMAICA

Exhibits

"HCH3"

CLINTON HART & CO.

HH/wMcg

P.O. BOX 234,  
58 DUKE STREET,  
KINGSTON,  
JAMAICA.

Letter,  
Clinton Hart  
& Co. to Bank  
of Jamaica

IN DUPLICATE

31st January, 1968.

31st January  
1968

10 The Bank of Jamaica  
Exchange Control  
King Street  
Kingston.

Dear Sirs,

ROSE HALL (DEVELOPMENTS) LTD.

We enclose herewith draft Agreement of Sale between Elizabeth Lovejoy Reeves and Rose Hall (Developments) Limited.

20 Rose Hall Limited in 1961 agreed to sell two parcels of land, known as Blocks C and D, to Mrs. Reeves for £50,000.

As a result of certain developments, Rose Hall (Developments) Limited now wish to repurchase the said two blocks of land for U.S. \$365,000 upon the terms appearing in paragraphs 2, 3 and 4 of the draft agreement above referred to. Kindly note that £25,000 has already been paid by Mrs. Reeves to Rose Hall Limited on account of the original purchase.

30 We should be obliged to have your approval to the form of agreement and the purchase by Rose Hall (Developments) Limited of the above land as the Company's plans for the development of the Rose Hall Estate for hotel and tourist purposes include the utilisation of this section of the property.

Yours faithfully,

(Sgnd) ?  
22.4.68

Exhibits

"HCH4"

Letter,  
Clinton Hart  
& Co. to  
Nation, Lord  
& deLisser

8th March  
1968

"HCH4" - LETTER, CLINTON HART & CO.  
to NATION, LORD & deLISSER

CLINTON HART & CO.

HH/wMcg

P.O. BOX 234  
58 DUKE STREET  
KINGSTON  
JAMAICA

8th March, 1968

Brian Nation Esq.,  
Messrs. Nation, Lord & deLisser,  
P.O. Box 334,  
Montego Bay.

10

Dear Brian,

Rose Hall (Developments) Limited  
and Mrs. Rosser Reeves

I enclose herewith original and three copies of the agreement as approved by Rose Hall (Developments) Ltd. together with copy letter from Price, Waterhouse & Co. dated 5th February 1968 confirming that, in their opinion, the transaction envisaged by the enclosed agreement would be treated as a capital gain for Jamaican Income Tax purposes, and the copy letter of 29th January from John Kelsey of Price Waterhouse & Co. in the U.S.A. which confirms that the agreement would qualify for capital gains in the United States.

20

We are in the process of obtaining Exchange Control approval to the transaction and, as soon as this is to hand, I will forward same to you.

I confirm that I hold cheque in the amount of U.S. \$73,000 which is to settle the first payment due under the Agreement and as soon as you return the original and two copies of the agreement duly signed by Mrs. Reeves, I will have the agreement executed by Rose Hall (Developments) Limited and send you a completed copy thereof together with cheque for the first payment.

30

I also enclose herewith copy Promissory Note which we will also have executed by Rose Hall (Developments) Limited and Mr. John Rollins and forward to you when sending the cheque. I would mention that the Note provides for the personal guarantee of Mr. John Rollins,

Yours sincerely,

Hugh Hart

Encls:

"HCH5" - LETTER, NATION, LORD & deLISSER  
to CLINTON HART & CO.

Exhibits

"HCH5"

NATION, LORD & deLISSER

P.O. BOX 334,  
MONTEGO BAY,  
JAMAICA.

19th March 1968

Letter,  
Nation, Lord  
& deLisser to  
Clinton Hart  
& Co.

19th March  
1968

Hugh Hart Esq.,  
Messrs. Clinton Hart & Co.,  
P.O. Box 234,  
KINGSTON.

10

Dear Hugh,

Re: Mrs. Rosser Reeves and  
Rose Hall (Developments) Ltd.

I received your letter (signed on your behalf  
by Clinton) of 8th inst. together with engrossed  
agreement.

I shall appreciate your being kind enough to  
let me have the draft agreement which was  
submitted to you by Peter Kerr Jarrett.

20

Yours sincerely,

(Sgd.) Brian

BCN/jm

"HCH6" - LETTER, CLINTON HART & CO.  
to NATION, LORD & deLISSER

"HCH6"

CLINTON HART & CO.

P.O. BOX 234,  
58 DUKE STREET,  
KINGSTON, JAMAICA  
22nd March, 1968

Letter,  
Clinton Hart  
& Co. to  
Nation, Lord  
& deLisser

22nd March  
1968

Brian Nation Esq.,  
Messrs. Nation, Lord & deLisser,  
P.O. Box 334,  
Montego Bay.

30

Dear Brian,

Mrs. Rosser Reeves and Rose Hall  
(Developments) Ltd.

Thank you for your letter of 19th instant and,  
as requested, I now send you herewith Xerox of

Exhibits

Peter Kerr Jarrett's draft agreement.

"HCH6"  
Letter,  
Clinton Hart  
& Co. to  
Nation, Lord  
& deLisser  
(continued)

Yours sincerely,

Hugh Hart

Encl:

"HCH7"  
Letter, The  
Tiderock  
Corporation  
to Clinton  
Hart & Co.  
10th April  
1968

"HCH7" - LETTER, THE TIDEROCK  
CORPORATION TO CLINTON HART & CO.

THE TIDEROCK CORPORATION  
ROSSER REEVES  
President

April 10, 1968

Mr. William Sells  
In care of Hugh Hart  
Clinton Hart & Co.  
P.O. Box 234  
58 Duke Street  
Kingston, Jamaica

10

Dear Bill:

Getting these attorneys together is like  
waiting for the conjunction of the planets.  
Since none of us can do it during the day, we  
have now agreed to meet on Wednesday evening,  
April 17.

20

Please keep in mind that I do not own this  
land, and I am merely an advisor to my very  
tough-minded wife. I must be a poor adviser,  
for she looks around and through me to the  
attorneys.

Please be patient. I will keep you advised.

Sincerely,

(Sgd.)

Rosser Reeves

30

RR:jm



Exhibits

"HCH9" - LETTER, CLINTON HART & CO.  
to NATION, LORD & deLISSER

"HCH9"

Letter,  
Clinton Hart  
& Co. to  
Nation, Lord  
& deLisser

CLINTON HART & CO.  
Solicitors &  
Notaries Public

HH/wMcg

P.O. BOX 234  
58 DUKE STREET,  
KINGSTON,  
JAMAICA.

24th April  
1968

24th April, 1968.

Brian Nation, Esq.,  
Messrs. Nation, Lord & deLisser,  
P.O. Box 334,  
Montego Bay.

10

Dear Brian,

Rose Hall (Developments) Limited  
and Mrs. Rosser Reeves

I refer to previous correspondence herein and  
in particular, to my letter to you of 8th ultimo.  
I am pleased to say that we have now received  
Exchange Control approval to the Agreement for  
Rose Hall (Developments) Limited to repurchase the  
lands from Mrs. Rosser Reeves, and I send you  
herewith Xerox copy of same for your records.

20

Yours sincerely,

Hugh Hart

Blind cc.  
W.H.Sells Esq.

"HCH10"  
Letter, John  
W. Rollins &  
Associates to  
Clinton Hart  
& Co.  
14th May 1968  
and Agreement  
25th May 1968

"HCH10" - LETTER, JOHN W. ROLLINS &  
ASSOCIATES to CLINTON HART & CO.  
and AGREEMENT, 25th May 1968

JOHN W. ROLLINS & ASSOCIATES  
2401 Pennsylvania Avenue  
Wilmington, Delaware 19806

30

May 14, 1968

Mr. Hugh Hart  
Clinton Hart & Company  
58 Duke Street  
Kingston, JAMAICA, W.I.



Dear Mr. Hart:

At Mr. Sells' request, enclosed please find the original and one copy of an agreement made between Rose Hall Limited and North Western Enterprises Limited.

Sincerely,

(Sgd.) Dianne J. Tindall

Mrs. H.L. Tindall.

Exhibits

"HCH10"  
Letter, John  
W. Rollins &  
Associates to  
Clinton Hart  
& Co.  
14th May 1968  
and Agreement  
25th May 1968  
(continued)

10 djt  
Enclosure  
file  
chron.

20 AN AGREEMENT made the 25th day of May One thousand nine hundred and sixty-eight BETWEEN ROSE HALL LIMITED a company incorporated under the Laws of the Cayman Islands with registered office at George Town, Grand Cayman (hereinafter called 'the Vendor') of the ONE PART and NORTH WESTERN ENTERPRISES LIMITED a company incorporated under the Laws of Jamaica with registered office at 30 Duke Street in the Parish of Kingston (hereinafter called 'the Purchaser') of the OTHER PART W H E R E B Y the Vendor agrees to sell and the Purchaser to purchase ALL THOSE parcels of land more fully described in the Schedule hereto on the terms set out therein.

S C H E D U L E

30	DESCRIPTION OF LAND	ALL THOSE two parcels of land parts of ROSE HALL ESTATE situate in the Parish of SAINT JAMES known as Blocks C and D and butting northerly on the Caribbean Sea, southerly on the proposed main road from Montego Bay to Falmouth, easterly on the centre line of a gully and westerly on Block B.
	AGREED SALE PRICE	SIXTY FIVE THOUSAND POUNDS (£650,000. 0. 0.)
	TERMS OF PAYMENT	Deposit of £1,000 on the signing hereof. A further payment of £24,000

Exhibits

"HCH10"

Letter, John  
W. Rollins &  
Associates to  
Clinton Hart  
& Co.  
14th May 1968  
and Agreement  
25th May 1968  
(continued)

when the Certificates of Title by Plan for the lands hereby agreed to be sold have been issued in the name of the Vendor. The balance of purchase money of £40,000 to remain on first mortgage secured on the land hereby sold such Mortgage to be for a period of 5 years bearing interest at eight per centum per annum and to be reduced in equal instalments of £10,000 10 each commencing with the second year of the said mortgage.

POSSESSION

On completion.

COMPLETION

On payment of the purchase money as stated above and the due registration of the mortgage above referred to.

INCUMBRANCES  
(IF ANY)

As imposed by the Parish Council of Saint James

TITLE

Under the Registration of Titles Law. Transfer to be prepared by Vendor's solicitors and the purchaser shall pay half the costs of same (Scale of Incorporated Law Society of Jamaica) and of stamp and registration fees and fee on new Certificate of Title

20

TAXES

To be apportioned up to the date of possession.

SPECIAL 1.  
CONDITIONS

Time shall be of the essence of the contract.

2.

The Purchaser undertakes to use the said land for no other purpose than that of the construction and proper running of a first class beach and recreational club. The said club shall be of a type of architecture approved of by the Vendor and the facilities thereof shall at all times be available to the owners of lots in the Rose Hall Development at an entrance and membership fee to be no more than 75% of the entrance and membership fee for persons who are not so resident on the Rose Hall

30

40

Development.

Exhibits

William H. Sells  
.....  
Witness

John W. Rollins  
.....  
Vendor

.....  
Witness

NORTH WESTERN ENTERPRISES  
LTD.  
per: E. Fraser Director  
.....  
Purchaser

"HCH10"  
Letter, John  
W. Rollins &  
Associates to  
Clinton Hart  
& Co.  
14th May 1968  
and Agreement  
25th May 1968  
(continued)

"HCH11" - LETTER, CLINTON HART & CO.  
to BANK OF JAMAICA

"HCH11"  
Letter,  
Clinton Hart  
& Co. to Bank  
of Jamaica  
10th October  
1968

10

CLINTON HART & CO.

HH/wMcg

P.O. Box 234,  
58 DUKE STREET,  
KINGSTON, JAMAICA

10th October, 1968

IN DUPLICATE

The Bank of Jamaica  
Exchange Control  
King Street  
Kingston.

Attention: Mr. M. Berry

Dear Sirs,

20

We should be most grateful if you would confirm our understanding of the Exchange Control Law that a company incorporated in Jamaica, however that company may be controlled; does not require permission under the Exchange Control Law to acquire from another Jamaican company or another company resident in the sterling area for exchange control purposes an interest in real estate whether by way of purchase, transfer or otherwise.

30

We should also be obliged if you would confirm to us that Rose Hall Limited, a company incorporated under the Laws of the Cayman Islands and having its registered office at George Town, Grand Cayman, is deemed to be resident in the sterling area for exchange control purposes.

Yours faithfully,

Exhibits

"HCH12"

Letter, Bank  
of Jamaica to  
Clinton Hart  
& Co.  
15th October  
1968

"HCH12" - LETTER, BANK OF JAMAICA  
to CLINTON HART & CO.

BANK OF JAMAICA  
Exchange Control

P.O. Box 621,  
KINGSTON,  
JAMAICA, W.I.

15th October, 1968.

Clinton Hart & Company  
Solicitors & Notaries Public  
58 Duke Street  
Kingston.

10

Dear Sirs:

With reference to your letter (HH/wMcg) of 10th October, 1968, I write to confirm that a company incorporated in Jamaica however that company may be controlled does not require permission under the Exchange Control Law to acquire from another Jamaican company or another company resident in the sterling area an interest in real estate by way of purchase transfer or otherwise, provided each company is designated resident in the respective country in which each is incorporated.

20

I confirm also that Rose Hall Limited a company incorporated under the Laws of the Cayman Islands and having its registered office at George Town, Grand Cayman is regarded as resident for Exchange Control purposes in Jamaica.

Yours faithfully,

30

(Sgd.) M. A. Berry

M. A. Berry  
for Assistant to the Governor

"D.M.1" - COPY RESOLUTION

COPY OF A RESOLUTION PASSED AT A MEETING  
OF THE ST. JAMES PARISH COUNCIL HELD ON  
17th SEPTEMBER, 1963

Exhibits

"D.M.1"

Copy  
Resolution  
17th September  
1963

MOVED BY: (SGD.) E. MARZOUCA  
SECONDED BY: (SGD.) O.L.DeLISSER

10 "RESOLVED THAT the sub-division of lands known as 'Part of Running Gut and Spring Estate and part of main road leading from Montego Bay to Falmouth' in the Parish of St. James, owned by Rose Hall (Developments) Limited be approved and that the Corporate Common Seal be affixed to the Plan thereof lettered and numbered "S/15"63", subject to the following conditions:

1. One common entrance only should be allowed lots 1B and 2B on to the proposed 75 feet wide road. This entrance should be located as shown at the point marked "X" on the plan.
- 20 2. One entrance only should be allowed lot 3 on to the proposed 75 feet wide road at the point marked "Y" on the plan.
3. No building or other permanent structure should be allowed within 40 feet of the common boundary of the lots and the proposed road.
4. Easements should be granted and endorsed on the deposited plan for the drainage of the proposed 75 feet wide road by way of all culverts, outlets and drains.
- 30 5. No entrance on to the proposed 75 feet wide road will be necessary at the point "Z" on the plan as it has been advised that the Parochial Road between "Z" and "P" is to be abandoned.
6. No wall, fence, hedge, hoarding, embankment or other similar erections (not being integral and necessary parts of a building) should be permitted to exceed a height of 3 feet 6 inches from ground level.
- 40 7. No waste or sullage water or effluent waste shall be permitted to be discharged into the sea unless first treated in a manner

Exhibits

"D.M.1"

Copy  
Resolution  
17th September  
1963  
(continued)

satisfactory to the Beach Control Authority  
and the Medical Officer (Health.)

Certified True Copy:

(Sgd.) M. Rodriguez.

Secretary  
St. James Parish Council  
9th October, 1963

"D.M.2"

Letter,  
Clinton Hart  
& Co. to  
Nation, Lord  
& deLisser  
2nd January  
1969

"D.M.2" - LETTER, CLINTON HART & CO.  
to NATION, LORD & deLISSER

CLINTON HART & CO.

JCE/bh

P.O. BOX 234,  
58 DUKE STREET,  
KINGSTON,  
JAMAICA.

10

2nd January, 1969

Messrs. Nation, Lord & deLisser,  
Solicitors,  
19a Union Street,  
Montego Bay.

Dear Sirs,

re: Blocks C & D Rose Hall Estates,  
Montego Bay

20

We act for Rose Hall Estates Ltd. with whom  
your client Mrs. Elizabeth Reeves is at present  
engaged in litigation in the Supreme Court of  
Judicature of Jamaica in Suit No. C.L. 716 of  
1968. As you are aware, that litigation  
involves the question of the validity of an  
alleged contract entered into between your  
client and our client on the 4th April, 1961  
relating to the above property.

30

At present the position in that Suit is that  
our client has appealed against the decision of  
Zacca J. in Chambers to the effect that the  
document in question was a legal and binding  
agreement.

10 Whereas our client has, from the time that it was aware of the Conditions of approval of the St. James Parish Council found Conditions 1, 3 and 6 totally unacceptable, under the Local Improvements Law as it stood prior to amendment, there was no contract in existence, and thus the provisions of Clause 7(d) of that "contract" could not be invoked. Since August 1968, however, the Amendment of the Law has provided the first opportunity for the validity of the "contract" to be argued, and although we still maintain that the agreement is invalid, without prejudice to our client's contentions in the suit, we hereby give you notice on behalf of our client that should the document dated 4th April, 1961 be ultimately held to be valid by virtue of the Local Improvements Ammendments Act 1968, our client finds Conditions 1, 3 and 6 of the St. James Parish Council subdivision approval dated 9th October, 1963 unacceptable, and accordingly, pursuant to Clause 7 of that document, the agreement is null and void.

20

Naturally, our client stands ready to repay all monies paid thereunder at any time that you may wish

Yours faithfully

"D.M.3" - LETTER, NATION, LORD & deLISSER to CLINTON HART & CO.

NATION, LORD & deLISSER  
Solicitors & Notaries  
Public

P.O. Box 334,  
MONTEGO BAY,  
JAMAICA.

10th January, 1969

Messrs. Clinton Hart & Co.,  
Solicitors,  
P.O. Box 234,  
KINGSTON

Dear Sirs,

re Blocks C & D - Rose Hall Estates, Montego Bay  
re Suit - No. C.L.716/68 - Reeves v. Rose Hall  
Ltd.

Exhibits

"D.M.2"

Letter,  
Clinton Hart  
& Co. 30  
Nation, Lord  
& deLisser  
2nd January  
1969  
(continued)

"D.M.3"

Letter,  
Nation, Lord  
& deLisser  
to Clinton  
Hart & Co.  
10th January  
1969

Exhibits

—  
"D.M.3"  
Letter,  
Nation, Lord  
& deLisser to  
Clinton Hart  
& Co.  
10th January  
1969  
(continued)

We are in receipt of yours of 2nd inst. the contents of which we find both interesting and amusing.

We shall not at this stage bother to inform you as to the fallacy of the argument adduced in your letter under reply, save in so far as to say that Zacca J, was not asked merely to decide upon the validity of the Contract but to order Specific Performance thereof which indeed he has done.

10

Yours truly,

NATION, LORD & deLISSER

per:

JCLL:jc

"BN1"  
Letter, Kerr-  
Jarrett & Co.  
to Nation  
and Nation  
16th March  
1964

"BN1" - LETTER, KERR JARRETT & CO.  
to NATION and NATION

KERR-JARRETT & CO.

P.O. Box 65,  
1 King Street,  
MONTEGO BAY,  
JAMAICA, W.I.

20

16th March, 1964.

B.C.O'B. Nation Esq.,  
Messrs. Nation and Nation,  
Solicitors,  
Montego Bay.

Dear Brian,

Sale - Rose Hall Ltd. to Reeves, Elizabeth

You will remember that a further £12,500 is payable three years from the date of the contract, 4th April this year - see Clause 5(d) of the contract. Rose Hall, must, at the same time, be able to tender a transfer of the existing main road reservation. We understand from the government that they registered their title, and should be therefore in a position to give title to us. However, it does not look as if, due to gross delays in the completion of the new main road,

30



that Rose Hall will be in a position to hand over the road to the government and exchange titles exactly on April 4th. I do not think, however, that this process will be delayed very much beyond the 4th of April, so I am writing to ask you to alert Rosser Reeves.

Exhibits

"BN1"

Letter, Kerr-Jarrett & Co. to Nation and Nation 16th March 1964  
(continued)

10

In the meantime we have obtained subdivision approval, and I enclose herewith a copy of the Parish Council Resolution. Unfortunately I only have the copy of the Plan with the Parish Council approval, so I am getting you another one.

Yours sincerely,

(Sgd.)

c.c. Rose Hall Ltd.

"BN2" - LETTER, KERR-JARRETT & CO.  
to NATION and NATION

"BN2"  
Letter, Kerr-Jarrett & Co. to Nation and Nation 3rd April 1964

KERR-JARRETT & CO.,  
Solicitors &  
Notaries Public

1 KING STREET,  
MONTEGO BAY,  
JAMAICA, W.I.

3rd April, 1964.

20

B.C.O'B. Nation, Esq.,  
Messrs. Nation and Nation,  
Solicitors,  
MONTEGO BAY.

Dear Brian,

Sale - Rose Hall to Rosser Reeves

30

I see you got a copy of Rosser's Letter to me of the 25th March. As I see that he is now absent from office, and will be until the end of this month, I thought I would just write you, with a copy to him.

Of course we will not hold Rosser to the letter of the Law, and in any event he has, by the terms of the contract, thirty days grace. I am not yet in a position to give you a firm date when we will get the Title from the Government, but it

Exhibits

        
"BN2"Letter, Kerr-  
Jarrett & Co.  
to Nation  
and Nation  
3rd April  
1964  
(continued)

looks like some time towards the end of the month.

I observe that the contract says that Rose Hall must be in a position to "lawfully tender a transfer of the property (including the existing main road reservation)". I suggest, therefore, that as soon as I see the Title comprising the section of Main Road which eventually could be transferred to Mrs. Reeves, that I produce it for your inspection. I take it that then Rose Hall will have performed its obligations and the further £4,500 will be payable.

10

Yours ever,

(Sgd.) PETER

K-J:bcd  
c.c. Rosser Reeves Esq.,  
Rose Hall Ltd."B N3"  
Letter, Ted  
Bates & Co.  
to Kerr-  
Jarrett  
22nd April  
1964"BN3" - LETTER, TED BATES & CO.  
to KERR-JARRETTTED BATES & COMPANY Inc.  
666 Fifth Avenue, New York, N.Y. 10019

20

ROSSER REEVES  
Chairman of the Board

April 22, 1964

Mr. Peter Kerr-Jarrett, Jr.  
P.O. Box 65  
1 King Street  
Montego Bay  
Jamaica, West Indies

Dear Peter,

I have just returned from the Far East to read the back correspondence on the property Mrs. Reeves bought from Rose Hall, and I think this is perhaps the best way to leave it:

30

1. The second payment is not due until Rose Hall can convey title to the old road.
2. At this moment in time, you do not know exactly when that will be.

3. I suggest that when they are free to convey title, you write me, and as soon as I hear from you, you will receive the money almost by return mail.

This, therefore, does not put an arbitrary date on it like May 1 since Rose Hall apparently isn't sure when the conveyance can be made.

10

Would you drop me a note if this meets with your approval? If it does, I will just relax until I hear from you or Bryan Nation that title can be conveyed and that the check is due.

Warmest personal regards,

(Sgd.)

rr:bjc  
cc: Mr. B. Nation

Rosser Reeves

"BN4" - LETTER, KERR-JARRETT & CO.  
to TED BATES & CO.

20

KERR-JARRETT & CO.  
Solicitors & Notaries Public

1 KING STREET,  
MONTEGO BAY,  
JAMAICA, W.I.

Rosser Reeves, Esq.,  
Ted Bates Co. Inc.,  
666 Fifth Avenue,  
New York 10019,  
New York, U.S.A.

27th April 1964

Exhibits

—  
"BN3"

Letter, Ted  
Bates & Co.  
to Kerr-  
Jarrett  
22nd April  
1964

(continued)

"BN4"

Letter,  
Kerr-  
Jarrett &  
Co. to Ted  
Bates & Co.  
27th April  
1964

Dear Rosser,

30

Thank you for your letter of the 22nd of April, and I trust you had a good trip. I think your suggestion that I let you know when we are in a position to transfer the Title and you will then make payment, is very fair and quite agreeable to Rose Hall.

All good wishes.

Yours sincerely,

(Sgd.)

PETER F. KERR-JARRETT

K-J:McG.  
c.c. B.C.O'B. Nation Esq.  
S.J. Winder Esq.

Exhibits

"BN5" - LETTER, KERR-JARRETT & CO.  
to NATION and NATION

"BN5"  
Letter,  
Kerr-Jarrett  
& Co. to  
Nation and  
Nation  
15th May 1964

KERR-JARRETT & CO.,  
Solicitors & Notaries  
Public

1, KING STREET,  
MONTEGO BAY,  
JAMAICA, W.I.

15th May 1964.

B.C.O'Brien Nation Esq.  
Messrs. Nation & Nation,  
Solicitors,  
MONTEGO BAY.

10

Dear Brian,

Sale - Rose Hall to Mrs. Rosser Reeves

I refer you to my letter of the 16th March enclosing a copy of the Parish Council Resolution approving the sub-division. I am now sending with this letter a print of Plan Examination No.70103. The land to be eventually transferred to Rosser's wife are Lots 2, 2A, 2B, 3, 3A, 3B, 3C and 3D.

Since I last wrote I have got from the Registrar of Titles separate Titles for the new Main Road, the Government has got out their Title for the existing Main Road, and I have, at Rose Hall's expense, obtained Title for the Parish Council to Lot 3A which is the existing Parochial Road that will be abandoned. I have sent a draft Transfer to the Crown Solicitor and we should be in a position to exchange Titles very shortly.

20

To enable you to follow the parish Council Resolution you will need the following information:

1. The point marked "X" is the boundary between Lots 1B and 2B on the new Main Road.
2. Point "Y" is on the new Main Road at a point  $9\frac{1}{2}$  inches on the Plan from the boundary between Lots 3 and 2B.
3. "Z" is of course the point where the existing Parochial Road meets the proposed new Main Road, i.e., the Southern boundary of Lot 3A. Please return Ex. No. 70103.

30

Yours

(Sgd.) PETER

K-J:McG  
Enclo.  
c.c. S.J. Winder Esq.

"BN6" - LETTER, NATION & NATION to  
KERR-JARRETT & CO.

Exhibits

"BN6"

18th May, 1964

Peter Kerr-Jarrett Esq.,  
Solicitor,  
MONTEGO BAY.

Letter,  
Nation &  
Nation to  
Kerr-Jarrett  
& Co.  
18th May  
1964

Dear Peter,

Sale - Rose Hall to Mrs. Rosser Reeves

Thanks for yours of 15th inst.

10

I am returning the print of Plan Ex. No.70103.

It appears to me that when the Title to Mrs.  
Reeves is to be finalised I shall have to see this  
print again.

Yours sincerely,

(Sgd.) BRIAN

BCN:jc  
Encl:

"BN7" - LETTER, KERR-JARRETT & CO. to  
TED BATES & CO.

"BN7"

Letter,  
Kerr-Jarrett  
& Co. to  
Ted Bates &  
Co.  
25th November  
1964

20

KERR-JARRETT & CO.,  
Solicitors & Notaries  
Public

1 KING STREET,  
MONTEGO BAY,  
JAMAICA, W.I.

25th November, 1964.

Rosser Reeves, Esq.,  
Messrs. Ted Bates & Company Inc.,  
666 Fifth Avenue,  
New York, N.Y.10019, U.S.A.

Dear Rosser,

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re: SALE to your Wife

Thank you for your letters of the 20th November.  
I confirm our telephone conversation that it will  
be quite in order for you to make the second payment  
of £12,500 in the first week of January, 1965.

All very good wishes,

Yours sincerely,

K-J/lel  
c.c. Rose Hall Ltd.  
Messrs.Nation & Nation

Peter Kerr-Jarrett

Exhibits

"BNS" - LETTER, KERR-JARRETT & CO.  
to BANK OF JAMAICA

"BNS"

Letter,  
Kerr-Jarrett  
& Co. to Bank  
of Jamaica  
11th January  
1965

KERR-JARRETT & CO.,  
Solicitors & Notaries  
Public

1 KING STREET,  
MONTEGO BAY,  
JAMAICA, W.I.

11th January, 1965

Bank of Jamaica,  
Exchange Control Section,  
P.O. Box 621,  
KINGSTON.

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Dear Sirs,

re: Mrs. E. Lovejoy Reeves.  
Your ref. AEC

Thank you for your letter of 4th January. The previous payment of £12,500 was paid to us in sterling by Messrs. Nation & Nation with their letter of 23rd June, 1961, and we are therefore not able to trace the bank receiving the \$ remittance. We are however sending Messrs. Nation, Lord & deLisser a copy of this letter and doubtless they can help you to get a Certificate from the Bank which negotiated the foreign currency used to make this payment.

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Yours faithfully,  
KERR-JARRETT & CO.,

(Sgd.)

Per:

K-J/lel  
c.c. Brian Nation Esq.

"HCH 13" - LETTER, DUNN COX & ORRETT  
to CLINTON HART & CO.

DUNN COX & ORRETT  
Solicitors & Notaries Public

1 KING STREET,  
MONTEGO BAY  
JAMAICA

25th September 1968.

Exhibits

          
"HCH 1"

Letter, Dunn  
Cox & Orrett  
to Clinton  
Hart & Co.  
25th September  
1968

Hugh Hart Esq.,  
Messrs. Clinton Hart & Co.,  
Solicitors,  
P.O. Box 234,  
KINGSTON.

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Re Rose Hall and Rosser Reeves

I refer to your letter of the 19th September  
and now enclose herewith:

1. Letter to Nation Lord & deLisser dated 12th  
September 1968;
2.               - do -               dated 4th Sept. 1968;
3. Letter from Nation Lord & deLisser dated 26th  
August 1968;
- 20 4. Letter from Sells dated 19th August 1968;
5. Letter to John Rollins dated 13th August 1968;
6. Copy Resolution Parish Council dated 9th  
October 1963 (copy not required);
7. Letter to Reeves dated 6th February 1965;
8. Letter from Reeves dated 20th January 1965;
9. Copy letter from Reeves dated 23rd December  
1964;
10. Letter to Nation & Nation dated 17th November  
1964;
- 30 11. Letter to Nation & Nation dated 15th May 1964;
12. Letter from Rosser Reeves dated 22nd April  
1964;

Exhibits

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"HCH1"

Letter, Dunn  
Cox & Orrett  
to Clinton  
Hart & Co.  
25th September  
1968  
(continued)

13. Letter to Nation & Nation dated 16th March 1964;
14. Letter from Ministry of Finance, Exchange Control Section dated 5th January 1962;
15. Letter to Ministry of Finance, Exchange Control Section dated 25th November 1961;
16. Letter from Ministry of Finance, Exchange Control Section, dated 5th October 1961;
17. Letter to Ministry of Finance, Exchange Control Section dated 28th September 1961.
18. Letter from Ministry of Finance, Exchange Control Section dated 20th September 1961.
19. Copy consent of mortgagee to sale dated 19th June 1961.

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Would you please return prints of the enclosures (except item 6) to me as I have not kept copies so as to save time.

Yours

K-J:k.  
Enclo.

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IN THE PRIVY COUNCIL

No. 10 of 1973

O N A P P E A L  
FROM THE COURT OF APPEAL OF JAMAICA

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B E T W E E N :-

ROSE HALL LIMITED                      Appellant

- and -

ELIZABETH LOVEJOY REEVES      Respondent

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RECORD OF PROCEEDINGS

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CHARLES RUSSELL & CO.,  
Hale Court,  
Lincoln's Inn,  
LONDON, WC2A 3UL.  
Solicitors for the Appellant

DRUCES & ATTLEE,  
115, Moorgate,  
LONDON,  
EC2M 6YA.  
Solicitors for the Respondent