[2011] UKPC 9
Privy Council Appeal No 0027 of 2010

JUDGMENT

Edwin M Hughes *v* La Baia Limited

From the Eastern Caribbean Court of Appeal (Anguilla)

before

Lord Rodger
Lord Walker
Lord Mance
Lord Clarke
Lord Saville of Newdigate

JUDGMENT DELIVERED BY
Lord Walker
ON

28 March 2011

Heard on 23 February 2011

Appellant	*Respondent*
Dr John Roberts CBE QC Christopher Drew Cheryl Drew	Saul Froomkin QC (Bermuda Bar) Kenneth Porter Ms Michelle Smith (Anguilla Bar)
(Instructed by Whitworth and Green Solicitors)	(Instructed by Charles Russell LLP)

LORD WALKER:

The facts

1. This appeal is concerned with the title to a piece of seaside land, about seven and a half acres in extent, at West End Bay on the north-west coast of Anguilla. Anguilla is one of the northernmost islands in the chain of the Leeward Islands, with the neighbouring islands of St Martin and St Maarten close to its south coast, and St Thomas (one of the US Virgin Islands) close on the west.

2. The land in question was owned under an unregistered title by Isaac Richardson, who died intestate on 24 August 1946 survived by his widow Cassie, and four children, Nathaniel, Edward, Sylvia (Bryson) and Bernard. (These and other names of members of the extended family occur frequently and the Board will for brevity, and without any disrespect, refer to them by their first names.) Bernard moved to St Maarten and died in 1957. There is no evidence in the record as to whether he died testate or intestate, or as to his personal representatives (if any). Cassie died some time after Bernard.

3. On 21 February 1975 the title to the land was registered under the Land Adjudication Ordinance, the owners being designated as "heirs of Isaac Richardson (represented by George Richardson of West End, Anguilla)" under title number Block 17709 B, parcel 23. There was conflicting evidence as to whether or not George was a relative of Isaac, but he was certainly a neighbour and it seems that he agreed to act as representative at the title adjudication preceding the registration since none of Isaac's surviving children lived in Anguilla: Nathaniel and Edward were in St Thomas and Sylvia was in Aruba.

4. On 20 January 1982 letters of administration to Isaac's estate were granted to George as attorney for Edward. This was about the time when Ms Cheri Batson became interested in the possibility of buying the land at West End Bay. Ms Batson is an American citizen. She was a long-term resident of St Maarten and she was looking for a site for a house in Anguilla. She thought that the land at West End Bay was very attractive, but the site was too large for a single house. She saw it as a development opportunity. A friend and business associate of hers, Rosario Spadaro, agreed to provide finance. Ms Batson and Mr Spadaro are the beneficial owners of the shares in La Baia Ltd ("Baia"), the claimant at first instance and the respondent to this appeal. Baia is a company incorporated in Anguilla on 13 June 1983.

5. When she visited the land Ms Batson contacted George who told her to discuss the matter with Edward. The outcome was a written sale agreement executed in duplicate on 15 October 1982. It was signed by Edward as seller and Ms Batson as purchaser (the definition of "purchaser" included "or a corporation" to be designated by [Ms Batson], but she was clearly contracting on her own behalf as a principal). Edward was also expressed to sign as representative of Nathaniel and Sylvia (each of whom later personally signed one copy of the agreement). The land to be sold was seven acres, excluding an identified half-acre plot. The price was US$91,000 with a deposit of US$10,000 to be paid at once. In the event US$20,000 was paid either on signature of the agreement or shortly afterwards.

6. The agreement contained an important condition:

> "This agreement is conditioned upon the purchaser obtaining from the government of Anguilla of a building licence for said parcel of land.
>
> In the event the purchaser cannot obtain a building licence the parties agree that this agreement shall be null and void and all monies received under this agreement by the seller shall be returned to the purchaser. Upon such payment, the obligations of the seller and purchaser under this agreement shall cease.
>
> The parties agree that title to the above parcel of land will be transferred on January 14 1983 or sooner at the law offices of Dr William Herbert on Anguilla BWI."

7. Some of the correspondence in the record suggests that the reference to a "building licence" was understood by both sides as a reference to a licence under the Aliens Land Holding Regulation Act, Cap A55 ("ALHRA"). This impression is strengthened by the official application form, the notes to which are exclusively concerned with building time limits and costs. But Mr Froomkin QC strenuously rejected that suggestion. As matters have turned out, it is unnecessary to make any finding on that point. Section 2(b) of ALHRA defines "alien" as including a company incorporated in Anguilla if it is under alien control (as defined in section 6 in a way that includes Baia). Section 3 (read with section 4) provides that no land in Anguilla shall be held by an alien without a licence granted by the Governor in Council, and any land held by an unlicensed alien shall be forfeited to the Crown. Section 9 provides:

"(1) No person shall without the licence of the Governor in Council hold any land in trust for an alien, and any land so held shall be liable to be forfeited to the Crown.

(2) Any person who contravenes this section is guilty of an offence and on summary conviction is liable to a fine of $1,250 or to imprisonment for a term of 3 months or to both.

(3) In this section, "trust" includes any arrangement whether written or oral, express or implied, and whether legally enforceable or not, whereby any land to which this section applies or any interest therein or any rights attached thereto is or are held for the benefit, or to the order, or at the disposal, of an alien, but does not include –

(a) the duties incident to a mortgage;

(b) the duties of a vendor to the purchaser pending payment of the purchase money, or after payment of the purchase money, if within three months after that payment, the property sold is vested in the purchaser or his interest therein is extinguished."

Section 9(3)(c) and (d) refer to trustees appointed for insolvency purposes.

8. It is debateable whether, as a matter of construction of the agreement, the condition as to obtaining a licence (of whatever sort) had to be satisfied by the completion date. There is no evidence about any separate building licence. As to a licence under ALHRA, in practice matters moved very slowly. An application for a licence, signed by Mr Spadaro on behalf of Baia on 14 October 1983, was submitted to the Chief Minister by Mr Mitchell, Baia's solicitor, on 16 February 1984, with copies to the Registrar of Lands. Mr Mitchell wrote some chasing letters. On 24 August 1984 the Permanent Secretary replied that the application was being processed. On 4 July 1985 the Permanent Secretary wrote declining to agree to an amendment in respect of what he referred to as the Savannah Bay project (another development in which Mr Spadaro was interested) and stating that no further licences would be issued to Mr Spadaro "until he has fulfilled his obligations in respect of the Savannah Bay project".

9. On 19 March 1986 Edward's solicitor, Mr Benjamin, wrote to Mr Spadaro pointing out that it was long past the time for completion and that no ALHRA licence had been obtained. He offered to return US$10,000 of the deposit. Mr Mitchell replied on 14 April 1986 stating on instructions, but apparently contrary to the truth, that no response had been received to the application and that it would be vigorously pursued. On 30 April 1986 Mr Benjamin replied stating that the agreement was at an end and sending a cheque for US$20,000.

10. However the cheque for the returned deposit was not cashed and further negotiations ensued. On 28 May 1986 a new agreement was entered into between Edward as seller and Baia as purchaser. Edward was also expressed to act as representative of Nathaniel and Sylvia. It had a recital affirming the subsistence of the first agreement (described as "acknowledged on 3 March 1983") but varied it by including the whole seven and a half acres in the sale and increasing the price to US$97,500 (of which US$ 20,000 had already been paid). After providing in clause (A) for immediate payment of the balance the agreement stated:

> "(B) The Seller in consideration of receiving said US$77,500 hereby releases all right, title and interest in said parcel of land, giving and transferring to the Purchaser the right to pledge, hypothecate and mortgage said property just as if the parcel of land had been deeded to the Purchaser. The Seller gives and transfers to the Purchaser all rights which he and or his co-owners have enjoyed to the said parcel of land and not just limited to the rights stated above in this paragraph. "
>
> (C) Seller agrees to execute a Land Transfer Form and a Charge Form in blank, as well as a Power of Attorney to be held by the Purchaser and filed with the Regional Cadastral and Registration in Anguilla at the appropriate time. The Seller further agrees to the placement of a Caution by the Purchaser on the parcel of land embraced by this document for the protection of the Purchaser's interest.

Apart from its affirmation of the earlier contract this agreement made no reference to the need to obtain a licence. But the terms of clauses (B) and (C) might be thought to suggest that the parties must have had it in mind.

11. The total actually paid was US$82,776, so as to include some interest. Documents were executed in blank as provided in clause (C) of the agreement. In addition on 25 July 1986 Edward executed a registered charge of the land in favour of Caldwell Corporation Ltd ("Caldwell") to secure US$500,000 with interest at

10% per annum. Caldwell is a BVI company whose shares are beneficially owned by Ms Batson and Mr Spadaro (and is therefore also an alien for the purposes of ALHRA). According to Ms Batson's witness statement Caldwell had, through Mr Spadaro, advanced funds both for the completion of the purchase and for various development costs. A charge in identical form was executed by George on 2 September 1986 and this latter charge was registered on 22 December 1986.

12. George died on 10 November 1986, creating a vacancy in the tenure of the registered title. Edward (as whose attorney George had obtained a grant of letters of administration) was still alive but was elderly and not resident on Anguilla. He did not take any immediate action to obtain a fresh grant.

13. In 1987 there was an unrelated dispute about the eastern boundary of the property. Mr Mitchell dealt with this on instructions from Caldwell. Early in 1989 Mr Spadaro asked Mr Mitchell to reopen the application for an ALHRA licence. A fresh application was made on behalf of Baia on 2 February 1989. Again matters moved slowly. In June 1989 Mr Mitchell wrote to Mr Benjamin about the registered title and Mr Benjamin indicated that his client (presumably Edward) would be applying for a cessate grant. A grant was apparently made on 23 July 1990, but it is not in the record, nor was any entry of it made on the land register.

14. Edward died on 16 September 1991. At that point Edwin Hughes (the defendant at first instance and the appellant before the Board) made his first appearance in the sequence of events. Edwin is the son of Edward though he uses a different surname. He did not give evidence at trial but his half-brother Louis Hodge did give evidence. In his witness statement Louis said that Edwin was brought up in Anguilla but then moved to St Thomas and then to England. After his father's death Edwin visited Anguilla in 1992 and made enquiries at the land registry. As he was resident in England he asked Louis to obtain a grant of letters of administration on his behalf.

15. On 28 November 1995 a grant of letters of administration to the estate of Isaac was made to Louis as attorney for Edwin. On 8 January 1996 Louis transferred the land to Edwin under a statutory form stating (incorrectly, on any view) that Edwin was the person entitled to Isaac's registered interest. This transfer was registered on the land register on 12 January 1996. There is some documentary evidence that in April 1996 a surveyor prepared a plan for the partitioning of the property.

16. On 21 April 1998 Louis, as administrator of Isaac, issued a writ against Caldwell. The statement of claim pleaded (incorrectly, on any view) that Edward

was the sole beneficiary of Isaac's estate, and omitted to mention that Louis had already transferred the property to Edwin. The relief sought was a declaration that the charge registered on 2 September 1986 (misstated as 1981) was void. On 28 April 1999 the statement of claim was struck out as disclosing no cause of action and the claim was dismissed. The record contains little more detail of the reasons for the striking out.

The proceedings at first instance

17. On 18 April 2001 Baia issued a writ against Edwin seeking an injunction to restrain him from carrying out building works on the property, and specific performance of the agreement for sale. Baia made an ex parte application for an injunction which was eventually heard inter partes on 30 July 2001. Judgment was reserved for six months and an interim injunction was granted on 5 February 2002.

18. Meanwhile Baia or its advisers obtained a letter dated 31 July 2001 purporting to have been signed on behalf of the Chief Minister. It referred to Baia's application for a licence under ALHRA and stated, "Based on the facts as presented to Government there seems to be no reason at this time why it should not look favourably upon an application for an [ALHRA] licence for the property on behalf of [Baia]." This letter was produced by Mr Charles Davis, a colleague of Mr Spadaro, but in cross-examination he was unable to comment on it. In particular, he could not say what facts had been presented to the Government.

19. Baia's statement of claim dated 20 February 2002 set out most of the history as summarised above (except that it omitted any mention of the interest of Bernard's estate) and pleaded that Baia was the beneficial owner of the property, subject to Caldwell's charge, and that Edwin had actual, implied, or constructive knowledge of this. Edwin's defence dated 9 May 2002 denied that Edward had had power to enter into an agreement to sell the property, which was vested in George as administrator. It pleaded that the charge in favour of Caldwell was a sham and illegal because Caldwell was a company under alien control. It pleaded that Edwin was simply making use of his father's interest in the property, that is some 1.75 acres. It also pleaded the Limitation Act. Baia's reply dated 11 June 2002 joined issue on all these points.

20. The action was tried over three days in September 2005 by Janice George-Creque J. Edwin was in England and did not give evidence. Louis did give evidence but it seems to have been of little assistance to the court. The judge gave judgment on 2 June 2006. She summarised the provisions of the two agreements, directing particular attention to the payment in full of the purchase price and the

unusual provisions of clauses (B) and (C) of the second agreement. She then traced the title to the property on the lines set out above. She referred to the official letter of 31 July 2001 but recorded that to date no ALHRA licence had been granted. She also noted the pleading on behalf of Edwin (which she ascribed to Louis) wrongly asserting that Edward was the sole beneficiary of Isaac's estate.

21. Geroge-Creque J summarised the issues in para 12 of her judgment:

(1) Did the two agreements and their ancillary documents constitute a valid and enforceable contract for sale of the land?

(2) If so, did it bind Edwin?

(3) Was the claim statute-barred?

(4) Should specific performance be ordered (in particular, in the light of the provisions of ALHRA)?

22. The judge's conclusions can be stated shortly, since they were reviewed by the Court of Appeal. They were as follows.

(1) The agreements were validly entered into by the three persons together entitled to the whole beneficial interest in the land. The judge was almost certainly right in assuming that the claims of any creditors of Isaac had long since been satisfied or become statute-barred, but she seems to have overlooked the fact (recorded in para 6(b)) of her judgment) that Bernard's estate had a vested interest in one-quarter of Isaac's estate. It was not a case of survivorship under a joint tenancy.

(2) Louis and Edwin were bound by the assignment effected by the second agreement of the beneficial interests to Baia. The sellers had been paid for in full so that "a completion [had] in effect already taken place." She might have added that Edwin was not a purchaser for value, but claimed (so far as he had any claim) through his father's estate.

(3) The claim was not barred by the Limitation Act, Cap L60. That Act did not apply to a claim for specific performance, and so far as damages were concerned any cause of action arose on 12 January 1996 (the date of the irregular transfer of the whole property to Edwin).

(4) ALHRA was not, on the authorities, a bar to specific performance being awarded.

The judge therefore ordered specific performance and granted a final injunction.

The proceedings in the Court of Appeal

23. Edwin appealed to the East Caribbean Court of Appeal (Rawlins CJ, Ola Mae Edwards JA and Rita Joseph-Olivetti JA (Ag)) who heard the appeal on 25 March 2009 and gave judgment on 11 January 2010. There was a single judgment of the Chief Justice with which the other members of the Court concurred. In paras 1 to 12 the Chief Justice summarised the facts on lines similar to the Board's summary, except that the Chief Justice seems to have overlooked (para 4) the interest of Bernard's estate and the cessate grant apparently made in 1990. Para 5 of the judgment stated that it was common ground that Edward "and his siblings" inherited the land from Isaac but the Chief Justice had just referred to Edward's siblings as Nathaniel and Sylvia. Bernard's personal representatives, if any, were not party to the proceedings and could not protect his estate's interest.

24. The Chief Justice identified the same four issues as had been identified by the judge. He chose to deal with limitation as the first issue. The Board prefers to follow the sequence adopted by the judge, as it is only after the status and effect of the sale agreement has been established that it is possible to determine the claims which may be open to Baia, and whether those claims are statute-barred.

25. On the first of the judge's issues, the validity of the contract for sale, Dr Roberts QC (for Edwin) attacked the agreements on the grounds that neither was properly executed. The Chief Justice considered these objections at paras 32 to 42 of his judgment. As to the objections to the signatories on behalf of the seller, it is true that George, so long as he remained the sole registered owner, was the only person who could (subject to ALHRA difficulties) make a registered transfer of the land to Baia. The unusual form of the second agreement tacitly recognised that. But the second agreement both confirmed the first agreement (subject to variations already noted) and went beyond it in the unusual provisions of clauses (B) and (C), the language of which was apt to operate as an equitable assignment of the three sellers' beneficial interests (or as a contract to assign their expectancies as soon as these matured into transmissible interests).

26. At this point it is appropriate to record that before the Board Mrs Cheryl Drew (who argued this part of the appellant's case) has sought and obtained permission to raise a new point of law, that is that the sellers had no interest in the

land, since the entire ownership of the land was vested in George as administrator who was "in full ownership without distinction between legal and equitable interests". That is a quotation from the advice of the Privy Council, delivered by Viscount Radcliffe, in *Commissioner of Stamp Duties (Queensland) v Livingston* [1965] AC 694, 707. In that case a widow had survived her husband by less than two years, and it was held that she had no interest, for the purpose of Queensland succession and probate duties, in her late husband's still unadministered estate. This argument has been deployed to meet the judge's observation in para 21 of her judgment (directed, as the Board understands it, to equitable ownership) that "a completion [had], in effect, already taken place" under clauses (B) and (C) of the second agreement.

27. In the present case, by contrast, Isaac died over 36 years before the first agreement and over 39 years before the second agreement. As already noted, it seems in the highest degree improbable that there remained any enforceable claims against his estate, except for current legal costs and other out-of-pocket expenses of administration. There is no evidence that Isaac's estate, so long after his death, contained any assets other than the land at West End Bay. In these circumstances the likelihood is that the land at West End Bay was held by George, not for the purposes of administering the estate (which had in effect already been fully administered) but as a trustee for the beneficiaries (subject only to the possible need for a written assent if the much-criticised decision in *Re King* [1964] Ch 542 applies in Anguilla). If that is wrong, Edward, Nathaniel and Sylvia each had an expectancy in a one-quarter interest in the land, which was very close to maturing into a transmissible interest, and could be assigned in equity for value: see the well-known statement of principle by Lord Macnaghten in *Tailby v Official Receiver* (1888) 13 App Cas 523, 543, a principle which has repeatedly been applied in later cases. Mrs Drew cited *Re Leigh* [1970] Ch 277, a case on unusual facts in that it concerned a specific gift of shares and indebtedness of a particular company made by a widow who was the only beneficiary in her husband's estate, but survived him by little more than six months. The passage in the judgment of Buckley J on which Mrs Drew relied, at p292, does not assist the appellant.

28. Nathaniel and Sylvia signed the first agreement but did not sign the second agreement. But in both agreements Edward was expressed to be acting as representative on behalf of Nathaniel and Sylvia. There is no evidence that the authority conferred on Edward by the first agreement was terminated by the second agreement, which had the effect of affirming the first agreement, subject to variations. There must also, after 25 years, be some room for the presumption of regularity. In any event Edwin has not pleaded the Statute of Frauds (or its Anguillan equivalent) as a ground for Nathaniel's and Sylvia's not being bound by the second agreement.

29. In short, the second agreement must in the Board's view be seen as a disposition, or failing that a contract to dispose, of equitable interests in the land. For these reasons the Board, in agreement with the Court of Appeal, rejects the attack on the signatories on behalf of the seller, except for the gap in relation to the interest of Bernard's estate. The Board also agrees with the Court of Appeal in rejecting the attack on the signatories on behalf of the purchaser. Baia was named as the purchaser and undertook the obligation of paying the purchase price. That the price was satisfied by cheques signed by Mr Spadaro is no evidence of any irregularity, especially in the light of the later charge in favour of Caldwell. The position as between Mr Spadaro, Baia and Caldwell (whether in terms of equity capital or loan capital) is not an issue in the case.

30. The Court of Appeal followed the judge in holding that Edwin was bound by the contract. In the Board's view that was plainly correct, in the sense that he could not disregard equitable interests in the land created by and subsisting under the contract. Edwin was not a purchaser for value, and his own registered title did not protect him from the obligation to respect subsisting equitable interests (Registered Land Act section 23 (c)).

31. As to the claim being statute-barred, the Court of Appeal followed the judge in applying section 3(7) of the Limitation Act, which provides that section 3 (laying down a six-year period for actions founded on a simple contract or on tort)

> "does not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except insofar as any provision thereof may be applied by the Court by analogy in like manner as the corresponding enactment repealed by this Act has heretofore been applied."

The Court agreed with the judge's view that it was the registration of the land in Edwin's name in 1996, and his subsequent actions, that made it necessary for Baia to seek equitable relief.

32. Finally the Court of Appeal agreed with the judge's view that ALHRA was no bar to an order for specific performance because of what the Chief Justice referred to as "the basic principle . . . that title to property which an alien holds remains in the alien and is voidable only at the behest of the Crown." Reference was made to authorities including *Young v Bess* [1995] 1 WLR 350 and *Equipment Rental and Services Ltd v Texaco (West Indies) Ltd* Civil Appeal No. 16 of 1997, East Caribbean Supreme Court, Dominica.

The Board's conclusions

33. In the course of the proceedings before the Board some issues have receded in importance while other issues have arisen or have assumed greater importance. Mrs Drew sought to reopen various points as to the binding character of the sale agreement. But in view of the concurrent findings of fact in the courts below that was an impossible task. The Board are satisfied that the second agreement, affirming the first agreement with some variations, was a valid agreement binding Edward, Nathaniel and Sylvia to sell their equitable interests in the West End Bay land, or alternatively their expectancies in that land, to Baia. Moreover the second agreement contained, in clauses (B) and (C), provisions intended to complete that sale, so far as the sellers could, in consideration of the payment in full of the purchase price.

34. The Board has already covered Mrs Drew's new point on *Commissioner of Stamp Duties (Queensland) v Livingston.* Because of the lapse of time it seems very probable that Isaac's estate had by 1986 been fully administered, save only for the actual vesting of the West End Bay land in the beneficiaries (either as tenants in common, or by way of partition). The beneficiaries had transmissible interests which were for all practical purposes interests in the land itself. Those interests bound Edwin, who was not a purchaser for value, whether he knew of them or not.

35. Regrettably both courts below overlooked the fact that at his death in 1957 Bernard was a vested interest in one quarter of Isaac's estate (subject to the limited interest of Cassie, Isaac's widow). It may be that there is a simple answer to this difficulty. If Bernard died childless and unmarried, his sister and his two brothers would have been entitled to his estate, once administered, in equal shares (and just as it is most unlikely the Isaac's estate has any unpaid creditors with enforceable claims, so that is unlikely in the case of Bernard). But the fact is that the Board had almost no evidence on this point (the only frail straws in the wind are a receipt signed by Edward on 3 March 1983, referring to his one-quarter share, and para 21 of Edwin's defence in this action, which refers to 1.75 acres, that is one-quarter of 7.5 acres). If Baia proceeds to enforce its claim against Edwin for specific performance Baia will be standing the risk (whether large or small) of a claim on behalf of Bernard's estate, if it has not devolved on his siblings.

36. Mr Christopher Drew sought and obtained leave to argue a new point, that Baia's claim, although not statute-barred, should be refused under the equitable doctrine of laches. Mr Drew cited at length from the judgment of Moore-Bick LJ in *P & O Nedlloyd BV v Arab Metals Co (No 2)* [2007] 1 WLR 2288. The facts of that case were very different (an endorsee of a bill of lading refused to accept a

consignment of metal on the ground that it was radioactive) and some of the points discussed are not material to this appeal. But the Board derive assistance from Moore-Bick LJ's reference (para 55) to Meagher, Gummow & Lehane, Equity: Doctrines and Remedies 4th ed (2002) para 36-050, that "laches" is used in different senses, but most often

> "to comprehend that degree of delay, which when coupled with prejudice to the defendant or third parties, will operate as a defence in equity".

The Lord Justice concluded his survey of the authorities by stating (para 61):

> "The question for the court in each case is simply whether, having regard to the delay, its extent, the reasons for it and its consequences, it would be inequitable to grant the claimant the relief he seeks".

The Board regards that as the right approach.

37. In this case Baia seems to have had no particular reason not to rely on a merely equitable title until Louis and Edwin came on the scene. The evidence was that Baia and its advisers did not know of the grant obtained by Louis at the end of 1993, or of Louis's application to have his title registered at the end of 1995, or of Louis's transfer to Edwin early in 1996, because the Registrar failed to give notice to Caldwell as the registered chargee. Then on 21 April 1998 Louis issued his proceedings against Caldwell. They were struck out, and Baia and its advisers may have supposed that Louis and Edwin had abandoned their claims. When Edwin began to carry out some building work on the land in 2001 Baia took action promptly, and obtained injunctive relief against him.

38. There are many unexplained gaps in the evidence in this case. That is hardly surprising since neither Mr Spadaro nor Edwin attended to give evidence at the trial. But it was for Edwin to show that there were particular circumstances making it inequitable for Baia to be granted the relief to which it was otherwise entitled, and he has not discharged that burden.

39. The last substantive issue is whether the courts below should have refused specific performance on the ground of public policy, in that the courts might be seen as lending their aid to a contravention of ALHRA. This point has caused the Board some concern. In *Young v Bess*, an appeal from St Vincent, the Board

resolved two conflicting lines of authority (on similar legislation in force in different Caribbean islands) and decided definitively that forfeiture is not automatic, but operates only if the Crown seeks and obtains from the court a declaration of forfeiture.

40. That decision reduces the apparently draconian nature of the legislation, but does not touch on the issue of specific performance, where the court itself is ordering a contract to be completed. However that issue arose squarely in *Equipment Rental and Services Ltd v Texaco (West Indies) Ltd*, an appeal from Dominica. Texaco (an alien company) had a 25 year lease, with an option for renewal for a further 25 years. It had exercised the option but had a licence under the Dominican equivalent of ALHRA for only the first 25 years, and it had omitted to obtain a further licence. The freehold was then sold to Equipment Rental. Much of the judgment of Byron LJ (Ag) is concerned with priorities but there is a clear statement of principle (in which Singh and Redhead JJA concurred):

> "The law is well settled. The Aliens Landholding Licence legislation does not affect the contractual and other relationships between vendor and purchaser and lessor and lessee. The rights, powers and privileges to forfeit land held by the unlicenced alien vests in the State, and not in the individual citizen. Any such land or interest in land, including a 25 year lease, is merely liable to forfeiture. The forfeiture is not automatic nor is it mandatory. In effect this means that the unlicenced alien can hold the land or interest in the land subject to the right of the State to initiate steps to forfeit it. "

41. The Board sees no reason to differ from this clear conclusion reached by a distinguished court with much experience of the Caribbean legislation. The Board will therefore humbly advise Her Majesty that the appeal should be dismissed. The parties have 14 days to make written submissions as to costs.

Application to admit fresh evidence

42. At the start of the oral hearing the appellant applied to the Board to admit fresh evidence in the form of affidavits of Sir Emile Gumbs and Mr Herbert Hughes. The Board read those affidavits de bene esse but declines to admit them as they do not meet the first and second conditions laid down in *Ladd v Marshall* [1954] 1 WLR 1489, 1491. Mr Hughes was to have been called as a witness at trial. Baia's prospects of obtaining a licence under ALHRA are not particularly relevant, and are certainly not determinative, of the issue of ordering specific

performance. But the identity of each of the deponents suggests that the outcome of this appeal will come to the notice of the Chief Minister, who will be in a position to advise the Governor in Council to take such action as he and they think fit.