ANGUILLA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.8 OF 2003

BETWEEN:

[1] HOTEL DE HEALTH (CARIBBEAN) INC.
[2] ROBERT TALBOT

Appellants

and

[1] RONALD WEBSTER
[2] CLEOPATRA WEBSTER

Respondents

Before:

The Hon. Mr. Adrian Saunders	Chief Justice [Ag.]
The Hon. Mr. Brian Alleyne, SC	Justice of Appeal
The Hon. Ms. Suzie d'Auvergne	Justice of Appeal [Ag.]

Appearances:

Mr. Mark Brantley with Mrs. Cora Richardson Hodge for the Appellant
Ms. Joyce Kentish with Ms. Navine Kisob-Fleming and Mr. George Lake for the Respondent

---

2004: December 9;
2005: February 14.

JUDGMENT

[1] SAUNDERS, C.J. [AG.]: Mr. & Mrs. Ronald Webster brought a claim for rectification of a written agreement and specific performance of the agreement as rectified. The defendants to the action were a company incorporated in Anguilla along with Mr. Robert Talbot, the promoter of the company. The agreement in question had been negotiated by Mr. Webster and Mr. Talbot. The Judge gave judgment for the Websters and the defendants have appealed.

[2] The agreement concerned the sale of a property at Seafeather Bay owned by the Websters. Mr. Webster and Mr. Talbot had held discussions on the matter. On 11th March, 1996, Mr. Talbot sent to Mr. Webster a formal proposal setting out "terms

and conditions in order to move ahead". The terms expressed a "total purchase price including all interest and principal" of $2.8 million payable over a period of twelve years. Actual quarterly payments and their due dates were also set forth in the proposal. This proposal did not stipulate what proportion of the $2.8 million was principal and what sum represented interest.

[3] Mr. Webster made a comprehensive written response on 21st March, 1996. He stated that he had made "a few minor changes that in my opinion will not create any problem". His letter appeared to have been predicated upon prior oral discussions because he reiterated that the actual purchase price including interest was $3.3 million and he stated that:

> "I was prepared to accept $300,000.00 up front and that the principal to be paid within 10-12 years. When I mentioned interest of $300,000.00 over a period of 10-12 years that that sum is only a token figure to compare with the real figure on remaining balances, but I know what was said was done in good faith knowing that expenses will be incurred by you in order to bring the facility up to standard. So I stick to my commitment…"

Mr. Webster also set out his own preferred payment plan. There was to be a down payment of $20,000.00 on acceptance of the offer and a further down payment of $160,000.00 at the closing. Mr. Webster wrote out in hand his own quarterly payment schedule spread over 12 years. All of the payments totaled $3.3 million.

[4] Mr. Talbot responded on 26th March, 1996 in this fashion:

> "I have reviewed the information that has been faxed to me concerning the changes. I agree to pay a total price of principal and interest of $3,300,000 U.S.
> It was obviously my misunderstanding related to the full price.
> The only changes I would like to see are the following:
> 1) Down payment on acceptance of offer - $10,000.00 U.S.
> 2) Amount to be paid on closing - $170,000.00 U.S.
> 3) Closing to occur on July 31, 1996.
> 4) In regard to the final payments, I would like the option to spread them over two (2) years rather than just one year. As mentioned, this is an option and gives us a certain flexibility should the need arise.
>
> If the above is acceptable to you, we will prepare the formal offer for signatures and move ahead immediately with the necessary

> documentation for closing on July 31, 1996. Also please be aware of the fact that the formal offer will come from an Anguilla Corporation.
> I look forward to hearing from you in the near future".

[5] The next document pertinent to this transaction and exhibited before the court was a formally drawn up "Agreement for Sale and Purchase of Real Estate". This document was prepared by Attorney-at-Law Mr. Keithley Lake on the instructions of Mr. Talbot. It is the document that was ultimately presented to the Websters for their signature. The agreement is dated 26th April, 1996 but there is some dispute as to when it was first seen by the Websters and actually signed by them. The agreement states that the property was being sold for US$1,090,000.00 exclusive of interest. Provision is made, upon the signing of the agreement, for a lump sum payment of $10,000.00 to be paid by the purchaser and held by Mr. Lake's office in escrow pending the closing. The agreement stipulates a closing date of 31st July, 1996. On that date a lump sum payment of $180,000.00 was to be made to the Websters.

[6] Clause 7 of the agreement is the provision over which much of the controversy between the parties rests. That clause stated:

> "The balance of the purchase price of …US$910,000.00 will be paid to the Sellers in accordance with the terms set forth in Schedule 2 attached hereto and incorporated herein. The Purchaser agrees to pay interest at the rate of ten per cent (10%) per annum on the outstanding balance of the Purchase Price until the final payment ***with power to repay without penalty***"(my emphasis).

The agreement also provided for interest payments to be made, spread over a twelve year period. The principal of $1,090,000 plus the interest payments over that period totaled $3.3 million. The Agreement had appended to it a Schedule with the following amortization table:

000053

94A

94A

Wetaskiwin Property
Imputed Interest Calculation
Schedule 2

Int. Rate
10.0%

Quarter #	Date	Yr.		In US$ Balance Outstanding	In US$ Total Payment	In US$ Interest Payments	In US$ Principle Payments
			Original Purchase Price	3,300,000.00			
			Down Payment on Acceptance	3,290,000.00	10,000.00		10,000.00
	July 31	96	Down Payment on Closing	3,120,000.00	170,000.00		170,000.00
1	Jan 31	97		3,082,500.00	37,500.00	78,000.00	(40,500.00)
2	April 30	97		3,045,000.00	37,500.00	77,062.50	(39,562.50)
3	July 31	97		3,007,500.00	37,500.00	76,125.00	(38,625.00)
4	Oct 31	97		2,970,000.00	37,500.00	75,187.50	(37,687.50)
5	Jan 31	98		2,932,500.00	37,500.00	74,250.00	(36,750.00)
6	April 30	98		2,895,000.00	37,500.00	73,312.50	(35,812.50)
7	July 31	98		2,857,500.00	37,500.00	72,375.00	(34,875.00)
8	Oct 31	98		2,820,000.00	37,500.00	71,437.50	(33,937.50)
9	Jan 31	99		2,770,000.00	50,000.00	70,500.00	(20,500.00)
10	April 30	99		2,720,000.00	50,000.00	69,250.00	(19,250.00)
11	July 31	99		2,670,000.00	50,000.00	68,000.00	(18,000.00)
12	Oct 31	99		2,620,000.00	50,000.00	66,750.00	(16,750.00)
13	Jan 31	0		2,570,000.00	50,000.00	65,500.00	(15,500.00)
14	April 30	0		2,520,000.00	50,000.00	64,250.00	(14,250.00)
15	July 31	0		2,470,000.00	50,000.00	63,000.00	(13,000.00)
16	Oct 31	0		2,420,000.00	50,000.00	61,750.00	(11,750.00)
17	Jan 31	1		2,360,000.00	60,000.00	60,500.00	(500.00)
18	April 30	1		2,300,000.00	60,000.00	59,000.00	1,000.00
19	July 31	1		2,240,000.00	60,000.00	57,500.00	2,500.00
20	Oct 31	1		2,180,000.00	60,000.00	56,000.00	4,000.00
21	Jan 31	2		2,120,000.00	60,000.00	54,500.00	5,500.00
22	April 30	2		2,060,000.00	60,000.00	53,000.00	7,000.00
23	July 31	2		2,000,000.00	60,000.00	51,500.00	8,500.00
24	Oct 31	2		1,940,000.00	60,000.00	50,000.00	10,000.00
25	Jan 31	3		1,865,000.00	75,000.00	48,500.00	26,500.00
26	April 30	3		1,790,000.00	75,000.00	46,625.00	28,375.00
27	July 31	3		1,715,000.00	75,000.00	44,750.00	30,250.00
28	Oct 31	3		1,640,000.00	75,000.00	42,875.00	32,125.00
29	Jan 31	4		1,565,000.00	75,000.00	41,000.00	34,000.00
30	April 30	4		1,490,000.00	75,000.00	39,125.00	35,875.00
31	July 31	4		1,415,000.00	75,000.00	37,250.00	37,750.00
32	Oct 31	4		1,340,000.00	75,000.00	35,375.00	39,625.00
33	Jan 31	5		1,265,000.00	75,000.00	33,500.00	41,500.00
34	April 30	5		1,190,000.00	75,000.00	31,625.00	43,375.00
35	July 31	5		1,115,000.00	75,000.00	29,750.00	45,250.00
36	Oct 31	5		1,040,000.00	75,000.00	27,875.00	47,125.00
37	Jan 31	6		965,000.00	75,000.00	26,000.00	49,000.00
38	April 30	6		890,000.00	75,000.00	24,125.00	50,875.00
39	July 31	6		815,000.00	75,000.00	22,250.00	52,750.00
40	Oct 31	6		740,000.00	75,000.00	20,375.00	54,625.00
41	Jan 31	7		665,000.00	75,000.00	18,500.00	56,500.00
42	April 30	7		590,000.00	75,000.00	16,625.00	58,375.00
43	July 31	7		515,000.00	75,000.00	14,750.00	60,250.00
44	Oct 31	7		440,000.00	75,000.00	12,875.00	62,125.00
45	Jan 31	8		330,000.00	110,000.00	11,000.00	99,000.00
46	April 30	8		220,000.00	110,000.00	8,250.00	101,750.00
47	July 31	8		110,000.00	110,000.00	5,500.00	104,500.00
48	Oct 31	8		0.00	110,000.00	2,750.00	107,250.00
Total					3,300,000.00	2,210,000.00	1,090,000.00

Filename: A:\Web0418.wk4

[7] The Websters executed this agreement. They signed it expecting that they were going to receive a total of $3.3 million over a twelve year period. But they also signed it well aware of what was expressly stated in Clause 7. Some time after the agreement was signed and already in force, the Websters sought to have it rectified. Negotiations between the parties to this end bore no fruit and the Websters ultimately brought this action.

[8] The action is premised on the contentions that: the true and agreed purchase price of the property is and always was $3 million plus interest of $300,000.00; that Mr. Talbot fraudulently inveigled the Websters to execute an agreement containing an artificial purchase price of $1,090,000.00 plus payments of interest; that the Websters agreed to this artifice solely in order to accommodate Mr. Talbot's fiscal arrangements and shareholder obligations in Canada; that it was never the common intention that the Websters would be prejudiced by granting Mr. Talbot this accommodation; that in any event the Websters did not fully comprehend the true meaning of the pre-payment clause; that they did not have the benefit of independent legal advice; that the written agreement represented an unconscionable bargain; that Mr. Talbot would be unjustly enriched if the Websters were stuck with the agreement as executed; that Mr. Webster had relied on the assurances of Mr. Lake that the Websters would not be prejudiced by the provisions of Clause 7; and that the Websters were mistaken as to the true meaning of Clause 7. In all these circumstances, the Websters allege, the court should rectify the document to reflect what they say is the true agreement of the parties.

[9] The trial Judge heard testimony from Mr. Webster, Mr. Talbot and Mr. Lake among other witnesses. The Judge seemed not to have been wholly impressed either with the testimony of Mr. Webster or that of Mr. Talbot. The Judge preferred Mr. Lake's testimony to Mr. Webster's. The learned Judge reminded herself that in seeking to prove mistake the Websters had a high standard of proof but in the end, the Judge felt that this burden had been discharged. The Judge concluded that the

Agreement dated 26th April, 1996 ought to be rectified to reflect that the true purchase price of the property was $3 million plus a nominal interest of $300,000.00. The Judge did not think it necessary to make any considered finding on the allegations of fraud, unjust enrichment and unconscionable bargain which were pleaded by the Websters. The Judge also ordered the immediate payment of "the balance of the agreed purchase price outstanding together with interest thereon in the total sum of US$2,894,500.00".

[10] I pause here to note that even if the judge were right in her legal conclusions, the order that was made, if carried out, would have resulted in a benefit to the Websters for which not even they had bargained. The substance of Mr. Webster's position was that the parties had agreed on the payment of $3.3 million over a 12 year period but the effect of the order made by the trial judge was to grant the Websters the full $3.3 million in an accelerated manner.

[11] Counsel for the Websters sought to justify the order made by the Judge on the basis of one of the clauses of the agreement. That clause stated that if there was default by the purchasers in the payment of any installment of principal or interest, then the whole sum of principal and interest became due. Counsel alleges that the purchasers were in such default.

[12] It appears that in the course of the carrying out of their agreement, the parties had encountered differences regarding certain payments that were to have been made by the purchasers. The latter had withheld or neglected to make payments totaling $157,000.00. That sum of $157,000.00 was however subsequently paid and received although the Websters had instructed their solicitors to keep the money in an interest bearing account pending their attempts to seek rectification. The Websters pleaded the non-payment of the monies as an act of default on the part of the purchasers justifying immediate payment of all principal and interest. The purchasers in their pleadings denied that they were in default. It does not seem as though this issue was pursued by either party at the trial and in her judgment, the trial judge did not explore the matter. Nor did the Judge make any findings of fact

relative to it. In the circumstances, this court would hesitate to find a default proved that would have justified the invoking of the relevant clause in the Agreement. It seems to me therefore that the most the Websters could have obtained by way of relief was an order that the purchasers pay the sum of $3.3 million over the 12 year period. But all of this is without prejudice to the real issue as to whether the Judge was right to order rectification of the written Agreement.

[13] The judge's decision to order rectification was premised on the ground of mistake. The pleaded particulars of the mistake were that the Websters were mistaken as to the true meaning of the clause which gave the purchasers the right to "repay" (but I think that what was obviously intended here was "pre-pay") the stated purchase price without penalty. It was also alleged that the Websters were misled because they were, at the time of execution of the agreement, verbally assured that notwithstanding the purchase price stated in the agreement, they would still receive the full sum of $3.3 million.

[14] Mr. Webster had testified that when he was about to sign the agreement, he noticed that the stated purchase price was $1,090,000.00 and not $3 million. He said that he then drew Mr. Lake's attention to that fact and the latter told him not to worry about it. He said that he signed the contract because he trusted Mr. Lake and because Mr. Lake had promised him that he (Mr. Lake) would rectify the document later. By his own admission therefore, Mr. Webster was fully aware of the nature and effect of the pre-payment option in Clause 7 before signing the Agreement. His evidence was that he was sufficiently worried about this clause that he raised the matter with Mr. Lake who reassured him that the clause would not affect his (Mr. Webster's) expectation that he would be receiving $3.3 million over the 12 year period.

[15] The Judge did not accept this evidence of Mr. Webster's. The Judge preferred the evidence of Mr. Lake, a witness called by the Websters themselves. What was the

evidence given by Mr. Lake? I think it is useful to set out portions of his evidence at some length. Mr. Lake testified in his evidence-in-chief that:

> "On day of executing the Agreement both Mr. Webster and his wife reviewed the documents. I do not recall any conversation with Mr. Webster concerning the Purchase price that was expressed in the Agreement. Concerning the Clause 7 – Power to pay without penalty, there was no concern or discussion with Mr. Webster this day concerning any of the provisions in the Agreement. On this day I did have no knowledge that Mr. Webster had quoted the purchase price of US$3.3 million to Mr. Talbot for the property.
>
> Q. On this day did you have any knowledge that Mr. Talbot had agreed to pay the price of $3.3 million for the property?
> A. No …

[16] Mr. Lake acknowledged stating in his witness statement that "It was always my understanding that the purchase price agreed between the parties was US$3.3 million to be paid in the manner set forth in the amortization table attached to the agreement". He had also said in that witness statement that "I do recall Mr. Talbot saying that payment over the term was important to his cash flow for Canadian tax purposes". He went on to say in his evidence-in-chief that:

> "I would not say that at clause 1 of this Agreement the purchase price US$1,090,000.00 is at variance with my understanding. My understanding was that since the payments were over a 13 year period and the sum US$1,090,000.00 excluded interest, then over time with interest it could amount to US$3.3 million".

[17] In cross-examination, Mr. Lake was more explicit. Among other things, he stated:

> "… I did not advise at any time either Mr. Talbot or Mr. Webster in relation to the terms of the agreement. I did not advise Mr. Webster that Mr. Talbot had to have the agreement reflected in the way it was for Canadian tax purposes. I presided over the signing of the agreement. Prior to the signing Mr. Webster did not raise the issue that if the purchase price being what it was in the agreement. He did not explain any concerns, unease or disgust that it was $1.9 million. There was no discussion with Mr. Webster about anything in the document. Mr. Webster did not come to my office at any time prior to the signing and raise any issue relating to the prepayment clause 7. Prior to signing, Mr. Webster did not raise points concerning the schedule to the agreement. Mr. Webster and Mr. Talbot read the agreement prior to signing. I do not recall Mrs. Webster or Mrs. Talbot reading the agreement. I had no such conversation with Mr. Webster about price or agreement where I told him "not to worry, Mr.

> Talbot needed this for tax purposes in Canada". I never said to Mr. Webster "Trust me I will not allow anything bad to happen to you". I never placed my finger on the $3.3 million in the schedule at the bottom in the first column and said that, that figure was not affected. Prior to signing I never said to Mr. Webster that the document will be rectified some time later. Mr. Webster did not express any difficulty with the transaction to me…
> … Mr. Webster at the meeting I attended – This was the first time I was aware he had difficulty with clause Re: Repayment. This was after he had signed the agreement. There was absolutely nothing I could have done to encourage Mr. Webster to do about the agreement".

[18] There is therefore significant variance between the evidence given by Mr. Webster and that given by Mr. Lake as to what transpired at the execution of the agreement. As noted before, the Judge preferred the evidence of Mr. Lake. If one accepts the Judge's finding of fact that Mr. Lake's testimony on this issue was more credible than Mr. Webster's (and I must note in parenthesis that no cross-appeal was lodged against this finding), then the factual basis on which the plea of mistake was premised was not at all made out.

[19] The learned Judge also rested her decision on a finding that, prior to the execution of the formal Agreement, the parties had agreed on a purchase price for the property of US$3 million and fixed interest of US$300,000.00. The Judge found that Mr. Talbot needed to present the purchase price in the Agreement "in a favourable manner, for the company's tax obligations in Canada…" As to the second of these issues, more will be said later. As to the first, purely on the basis of the correspondence exchanged between the parties, it does not appear that the parties were *ad idem* on how the sum of $3.3 million was comprised even as they did agree on that figure as representative of the total of principal and interest spread over 12 years.

[20] Mr. Webster's letter of 21st March, 1996 seems clear on the matter but neither Mr. Talbot's letter of 11th March nor the one on 26th March refers to a precise breakdown between principal and interest. Mr. Talbot's letter of 11th March speaks of the "total purchase price including all interest and principal" being $2.8 million

while the letter of 26th March states, "I agree to pay a total price of principal plus interest of $3.3 million". The only antecedent agreement or common intention regarding the monies payable by the purchasers was that $3.3 million would represent all principal plus all interest spread over twelve years.

[21] The learned trial judge relied in her judgment on the case of Thomas Bates & Son Ltd v. Wyndham's (Lingere) Ltd[1]. The *ratio* of that case is instructive. It states:

> (i) Where two parties to an instrument had a common intention and it was shown (a) that the plaintiff erroneously believed that the instrument gave effect to that intention, (b) that the defendant knew that it did not because by reason of the plaintiff's mistake the instrument contained or omitted something, (c) that the defendant failed to bring the mistake to the plaintiff's notice (d) that the mistake would benefit the defendant or (per Eveleigh LJ) merely that it would be detrimental to the plaintiff, the court was entitled to conclude that the defendant's conduct was such that it would be inequitable to allow him to resist, or that he should be estopped from resisting, rectification of the instrument to give effect to the common intention, despite the fact that the mistake was not at the time of the execution of the instrument a common mistake but rather a unilateral mistake.

[22] In my view, the Thomas Bates case is distinguishable from the circumstances here in at least two important respects. Firstly, in this case, as previously suggested, the formal Agreement that was executed by the Websters was not inconsistent with the antecedent common intention that the purchasers would pay a total of $3.3 million inclusive of interest spread over 12 years. Secondly, at the time he executed the Agreement, Mr. Webster was not ignorant of the presence of the Clauses that he later considered to be objectionable.

[23] Mr. Webster was free to accept or reject Mr. Talbot's "formal offer" of 26th April, 1996. He read it. It ran to three pages excluding the signature page and the appended amortization table. It contained 15 Clauses. Clause 7 and likewise Clause 9 (which spoke to "the balance of the purchase price of US$910,000.00" after the down payment of US$180,000.00) were not surreptitiously slipped into

[1] (1981) 1 A.E.R. 1077

the Agreement. These were not innocuous Clauses in fine print somewhere that might have escaped the attention of the average person, far less a person described by Mr. Lake, who knew him well, as a shrewd and experienced businessman.

[24] There is a statement of Mustill, J that I think is not inappropriate to the present circumstances. The learned Judge was giving judgment in the case **The Olympic Pride**[2], a case where one party sought rectification of a charter-party. The Judge noted that

> "The Court is reluctant to allow a party of full capacity who has signed a document with opportunity of inspection, to say afterwards that it is not what he meant. Otherwise, certainty and ready enforceability would be hindered by constant attempts to cloud the issue by reference to pre-contractual negotiations. These considerations apply with particular force in the field of commerce, where certainty is so important".

[25] It may well be that, when he executed the agreement, Mr. Webster expected to receive the sum of $3.3 million spread over a period of twelve years. Why then did he sign an agreement that contained a clause expressly stating that the purchase price was $1,090,000.00 and that the purchasers had the option of pre-paying the purchase price in full without penalty? The trial Judge did not accept that he did so because of any assurances, on the part of Mr. Lake, that this crucial clause could safely be ignored. The Judge found that no such assurances were given. With what then are we left? Perhaps Mr. Webster thought that Mr. Talbot would not, for any manner of reasons, ever pre-pay the principal sum expressed in the agreement. Perhaps his mistake was in thinking that Mr. Talbot could not or would not wish to pre-pay in full. Perhaps Mr. Webster mis-calculated.

[26] The law does not allow for documents to be rectified on the ground of mistakes of such a nature. In **Riverlate Properties Ltd. v Paul**[3], Russell, LJ stated:

> "If reference be made to principles of equity, it operates on conscience. If conscience is clear at the time of the transaction, why should equity

[2] (1980) 2 Lloyd's Law Reports 68 @ 73
[3] (1975) 1 Ch. 133 @141

> disrupt the transaction? If a man may be said to have been fortunate in obtaining property at a bargain price, or on terms that make it a good bargain, because the other party unknown to him has made a mis-calculation or other mistake, some high-minded men might consider it appropriate that he should agree to a fresh bargain to cure the mis-calculation or mistake, abandoning his good fortune. But if equity were to enforce the views of those high-minded men, we have no doubt that it would run counter to the attitudes of much the greater part of ordinary mankind (not least the world of commerce), and would be venturing upon the field of moral philosophy in which it would soon be in difficulties".

[27] In giving judgment in favour of the Websters the trial Judge seemed to have placed tremendous store on the contrived amortization schedule appended by Mr. Talbot to the Agreement and the evidence of a Chartered Accountant on that schedule. The Judge agreed with the Accountant that the schedule was "fundamentally flawed as far as computation is concerned". The learned Judge found that "Columns 1 and 2 of the schedule reflect that the original purchase price, the true purchase price ...[was]... $3.3 million" and that "the interest payments column and the Principal payments column were never the common intention of the parties". The Judge determined that "Mr. Talbot, with the aid of his Chief Financial Officer, masterminded columns 3 and 4, knowing that …[they]… did not reflect the antecedent agreement that Mr. Webster would receive the purchase price of $3 million and fixed interest $300,000.00".

[28] At the trial below, counsel for Mr. Talbot objected vigorously to the letting in of the evidence of the Chartered Accountant, as an expert witness, after the close of the cases of both the claimants and the defendants. One of Counsel's grounds of appeal was based on the Judge's acceptance and treatment of this evidence. In at least one vital respect, counsel's objection is well made. On the pleadings, there never was an issue surrounding the appended schedule. It never was a part of the pleaded case of the Websters that the appended schedule reflected the hidden agenda the Judge ultimately made it out to be. Indeed, the schedule of the payments and the respective dates on which they were due mirrored precisely what was proposed by Mr. Webster himself in his own handwritten proposal of 21st March, 1996 and referred to at Paragraph 3 above. Moreover, with great respect

to the learned Judge, one must reiterate that the only antecedent agreement that was evinced from the correspondence leading up to the formal agreement was that the purchase price and interest over twelve years would total $3.3 million. I agree with Mr. Brantley for the appellants that ultimately, the expert's evidence was really of little value. That evidence may have established that generally accepted accounting practices were flouted or acquiesced in by both sides but it did not assist in proving or disproving the legal concept of mistake.

[29] Earlier in this judgment, at paragraph 19, I promised to comment on Mr. Webster's testimony regarding the alleged artificiality of the stated purchase price in the agreement. I would only say this. The Websters have approached this court seeking rectification of an agreement. Rectification is a discretionary, equitable remedy. Without prejudice to all that has been said about the merits of this case, I have doubts as to the appropriateness of a court granting such a remedy to vendors whose case hinges on a plea that they had agreed to have a fictitious price inserted in an agreement of sale in order to accommodate the purchaser's fiscal arrangements and shareholder obligations in another country.

[30] For all the above reasons I would allow this appeal with costs to the appellants in this court and in the court below. I would assess the value of this claim to be US$1,090,000.00 and calculate the costs on the basis of that figure. Accordingly, in the High Court the costs awarded are US$95,200.00 and in this court the sum of US$63,466.66 is awarded.

Adrian Saunders
Chief Justice [Ag.]

I concur.

Brian Alleyne S.C.
Justice of Appeal

I concur.

Suzie d'Auvergne
Justice of Appeal [Ag.]