THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO. 25 OF 2006

BETWEEN:

JUDITH JONES-MORGAN
Attorney General for the State of
Saint Vincent and the Grenadines

Claimant

V

1. **CHATHAM BAY CLUB LIMITED**
2. **CHATHAM BAY DEVELOPMENT CORPORATION LIMITED**

Defendants

Appearances:
Mr. A.W. Astaphan S.C., Mr. R. Marks, Mr. C. Gonsalves and Miss R. Forde for the Claimant
Mr. J. Guthrie Q.C., Mr. P. Campbell Q.C. and Mr. M. Peters for the Defendants

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2007: April 3;
June 29

JUDGMENT

[1] **MATTHEW J (Ag.)**: In this action the Attorney General of Saint Vincent and the Grenadines brings an action for forfeiture of certain lands purchased by the Defendants under the provisions of the Aliens (Landholding Regulations) Ordinance, Chapter 235 of the Laws of Saint Vincent and the Grenadines.

PLEADINGS

[2] By an amended claim form filed on March 30, 2007 the Claimant seeks to obtain as against the Defendants the following reliefs:

(1) A declaration that the Defendants and each of them failed to comply with and have been and are in breach of conditions 2 – 5, and in particular conditions 4 ad 5 of the Aliens Landholding Licence dated the 6th day of March 1987 and bearing registration No. 1800 of 1987 granted to the Defendants by His Excellency the Governor-General of Saint Vincent and the Grenadines.

(2) An order that in view of the breaches of the conditions of the Aliens Landholding Licence dated the 6th day of March, 1987 the lands mentioned and described in the schedules to two deeds of conveyance both dated the 27th day of November 1987 and bearing registration number 3074 of 1987 and 3075 of 1987 respectively, which formed the subject lands of the Aliens Landholding Licence dated the 6th day of March, 1987, are hereby forfeited to the Crown under the provisions of section 5 (1) and (2) of the Aliens (Landholding Regulations) Ordinance, Chapter 235.

(3) An order that the lands mentioned and described in the schedules to the two deeds of conveyance both dated the 27th day of November, 1987 and bearing registration numbers 3075 of 1987 and 3075 of 1987 respectively which formed the subject lands of the Aliens Landholding Licence dated the 6th day of March 1987 are hereby vested in the Crown as from the 7th day of June, 1987 under the provisions of Section 7(1) of the Aliens (Landholding Regulations) Ordinance, Chapter 235; and

(4) An order that the Registrar of the High Court of Saint Vincent and the Grenadines is hereby appointed on behalf of the Defendants to vest the said lands mentioned and described in the Schedules to the two deeds of conveyance both dated the 27th day of November 1987 and bearing registration number 3074 of 1987 and 3075 of 1987 respectively in the Crown.

[3] The attached amended statement of claim alleged that on the 6th day of March, 1987 the Governor-General granted to the Defendants an Aliens Landholding Licence to hold the

lands referred to above subject to certain conditions as authorized by Section 5(1) of the Ordinance referred to above and by virtue of that licence the Defendants purchased the lands referred to in the schedules aforementioned.

[4] The licence was tendered in evidence as A.G. 1 and was subject to certain conditions but for the purposes of this action only two conditions need be mentioned, those referred to above as conditions 4 and 5.

[5] Condition 4 is as follows:

"Chatham Bay Club Limited will construct a luxury class resort at Chatham Bay including:

(a) A large pavilion which will enclose the restaurants, seating 90 patrons and 40 patrons, respectively;

(b) A minimum of 55 guest rooms;

(c) Other facilities."

[6] Condition 5 is as follows:

"A minimum expenditure on the cost of construction of E.C. $15 million within three years of the grant of this licence."

[7] The Claimant alleges that the Defendants failed to comply with conditions 4 and 5 in that the luxury class resort and other requirements were never constructed as required by the licence and no money at all was expended far less the minimum expenditure of EC$15 million within the three-year period or at all.

[8] In the circumstances the Claimant sought the four heads of relief mentioned at paragraph [2] above.

[9] The Defendants filed an amended defence and amended counterclaim on 31st July, 2006. In their defence they deny that the Claimant is entitled to any of the relief claimed in the amended claim form.

[10] The Defendants admit that the development as first envisaged and described in conditions 4 and 5 of the licence, A.G.1, has not been constructed but alleges that from an early stage it was accepted by the Government that the said development could not be carried out.

[11] They allege further that in about July to August 1991 the then Prime Minister, the Right Honourable James F. Mitchell, gave a verbal assurance to Hazen Richardson, a director of both Defendants, to the effect that the Government would not bring any proceedings for forfeiture of the land subject to the licence for a period of at least three years.

[12] They alleged that the letter from the Permanent Secretary of the Ministry of Foreign Affairs dated 18th November 1991 to Messrs. Hughes & Cummings had the effect of waiving compliance with the requirements of conditions 4 and 5 of the licence.

[13] They allege also that the Government has at no time sought to impose any further or substituted conditions as to the development of the land and in the circumstance it is denied that the Defendants are in breach of conditions 4 and 5 of the said licence. They claim in the alternative that any breach of conditions 4 and 5 of the licence has been waived and/or the Claimant is estopped from reliance or any breach of conditions 4 and 5.

[14] The Defendants pleaded that they will further, if necessary, rely on the equitable doctrines of laches, acquiescence and delay to defeat the claim.

[15] Under particulars of the above the Defendants allege that the Government has permitted them to continue in ownership of the land and to incur expenditure with regard to it, for example in clearing the land, keeping it secure and in entering into negotiations for its development and/or sale with third parties including Royal Caribbean Cruise Line and Tricor Resources Limited.

[16] The Defendants alleged that the Claimant gave no notice of this claim to the Defendant until the service of these proceedings in 2006. They also made an issue of the fact that

Mr. …., one of the directors of the Defendants, who had particular responsibility for negotiations with the Government and with prospective investors died in 1999.

[17] The Defendants alleged that in the circumstances of the case there was no evidence of an agreement by the Government with the Defendants and/or a variation of the conditions of the licence to the effect that no proceedings for forfeiture of the Defendants' land would be brought within reasonable notice.

[18] The Defendants allege that by these proceedings the Claimant seeks to deprive the Defendants of their property and has not made any offer of compensation for such deprivation of their property and in this context they refer to section 6(1) of the Constitution of Saint Vincent and the Grenadines which contain the said note "Protection from deprivation of property."

[19] The Defendants counterclaimed for declaration that they are the owners of the freehold of the land at Chatham Bay in Union Island and further, pursuant to section 16 of the Constitution of Saint Vincent and the Grenadines, for redress for the threatened breaches by the Claimant of their fundamental rights, namely, their rights not to be deprived of their property without adequate compensation as guaranteed by section 6 (1) of the Constitution.

EVIDENCE

[20] Only two persons gave evidence. The Attorney General on behalf of the Claimant and Mr. Hazen Richardson on behalf of the Defendants.

[21] The Attorney General gave formal evidence based generally on the documents found in the Government files since she first became Attorney General in March 2001 long after the Defendants obtained their licence on March 6, 1987.

[22] She said she was familiar with the Aliens (Landholding Regulations) Act, Chapter 235 of the Laws of Saint Vincent and the Grenadines and related the application of the Act. She said that the Defendants' failure to erect the structures mentioned in the licence over the past 20 years meant that the land should be vested in the Crown.

[23] She was extensively cross-examined. She said even though she was not Attorney General when the licence was granted, because she had served in other capacities in the legal service she had direct knowledge of the procedures at the time. She agreed she was relying very much on the records she has been able to find in the matter.

[24] She admitted that the Government was only able to find five documents in relation to the matter and all the other documents which are in the bundle were disclosed by the Defendants.

[25] The Attorney General admitted that although originally the Claim included as grounds for forfeiture the non payment of licence fees and the non registration of the licence; because the Government had allowed additional time for these conditions to be met, there is not question anymore of forfeiture of these conditions.

[26] Objection was taken to some of the questions asked of the Attorney General which seemed to be asking her opinion on documents in evidence before the Court. The Court allowed the documents to be put to her only in so far as they were setting forward the Defendants' case. The Court would at the relevant time say what the documents meant.

[27] The Attorney General admitted that there were no letters before action but she could not say why a decision was suddenly taken in January 2006 to sue the Defendants.

[28] Under re-examination the Attorney General stated that she first became aware of the Chatham matter, the licence and … failure to comply, about two to three weeks before she filed the claim in Court.

[29] Mr. Hazen Richardson who resides in the island of Petit Saint Vincent in the Southern Grenadines gave a lengthy witness summary. He is a substantial shareholder and one of the directors of the Defendant companies.

[30] Mr. Richardson's witness statement was in effect to adopt and respect the statements contained in his amended defence and counterclaim and contain much of his opinions and arguments on issues which are before the Court for determination.

[31] In further examination in chief he stated he was a permanent resident in Petit Saint Vincent 1981 and was the owner of a resort hotel in that island. He gave a rather impressive statement of his business.

[32] He mentioned the immense contribution made by his partner, Mr. Doug Terman, towards the business venture involving Chatham Bay Development.

[33] He mentioned the proposals to involve the Cruise Ship Operators in the development by this was flatly refused by the Prime Minister of Saint Vincent as well as the Tricor Resources Limited Agreement option that did not get off the ground and also his involvement with Dr. Rolla at the instance of the Prime Minister.

[34] He spoke of the verbal assurance given to him by the Prime Minister that the Government would not forfeit the land within a period of three years and that he never received complaints from the Prime Minister or any indications that the Government might forfeit the Defendants' land.

[35] Under cross-examination he said he did not know how active the Defendants had been in terms of board of directors meetings. He indicated as regards the Prime Minister's verbal assurance that there were no documents confirming that the discussion between him and the Prime Minister took place.

[36] He admitted that based on his defence and his witness statements it is fair to say that the Defendants were not able to raise the money to complete the project and that is perhaps the most important reason why the Defendants had to consider other options like the Royal Caribbean Cruise Line and Tricor.

[37] He said the only proposal concluded and submitted to the Government following the letter of the Permanent Secretary to Messrs. Hughes & Cummings dated 18th November 1991 was the Royal Caribbean Cruise Line.

[38] He said he did not recall any application by the Defendants following the grant of the licence, for a variation of conditions 4 and 5 of the licence. He could not recall when was the last time there was a board of directors meeting of any of the defendants. He further said it could not be true that it was only on March 29, 2007 that the companies filed annual returns for the period 1997 to 2005.

[39] He admitted that the letter dated November 1991 was sent to the Defendants some two to three months after the alleged verbal assurance given by the Prime Minister, deferring consideration of the grant of the extension of the licence.

[40] He said it was correct that at the time he was being cross-examined the Defendants do not have the money to perform the project under the licence.

[41] When he was re-examined he said he did not consider the letter of 18th November 1991 inconsistent with what the Prime Minister had said to him. He said the action brought by the Claimant caught him by complete surprise.

[42] Besides parol evidence in this case there were a number of documents tendered by the Parties and learned Queen's Counsel for the Defendants kept reminding all those concerned that the bulk of the documents were disclosed by the Defendants. I shall refer to those documents in the course of my conclusions where it is necessary to do so.

CONCLUSIONS

[43] It may be necessary to … something about legislation pertaining to Aliens Landholding which is on the statute books of most, if not all, of the territories of the Eastern Caribbean, and possibly in the larger territories. It is my view that the purpose of such legislation is to obviate any attempt towards decolonization.

[44] If control is not placed on the holding of land in such relatively small islands nothing would deter the very wealthy from buying all the lands on a small island and then cutting it up to sell to equally wealthy people for holiday homes. The situation would be disastrous for young professionals and others who wished to acquire a house in the country of their birth.

[45] There is the well known case of the Registrar of the High Court in St. Kitts and Nevis. Both he and his wife were aliens but their infant son was born in St. Kitts. The wife bought the land without an aliens landholding licence and held it in trust for the infant son. The distinguished Sir Lascelles Robotham, then Chief Justice and President of the Court of Appeal ordered forfeiture of the land. I refer to ***Ramsaran v Attorney General*** (1986) found at 38 WIR.

[46] In Saint Lucia as High Court Judge, I dealt with the case Melville Rodney Hodkinson and Christopher Clouth both of London against land owner, Arnott Valmont. The case was decided in 1992. The claim was brought by the Plaintiffs against the Defendant for not building an access road which was alleged to be a condition of sale of land between the Plaintiffs and the Defendants. In the course of the case Learned Queen's Counsel for the Defendant submitted that the First Plaintiff could not hold land in trust for his son who was born in St. Lucia. In that case I referred to ***Chase Manhattan Bank v Kaffia*** (1984) 33 WIR which was a case from Anguilla touching on Aliens Landholding.

[47] There are also the cases cited in this case by both Counsel. I refer to ***Ho Young v Bess*** 1995 1 WLR 250; Village ***Cay Marina Limited v Ackland*** (1996) 52WIR 238; ***Spiricor of St Lucia Ltd v Attorney General*** Civil Appeal no 3 of 1996; ***Equipment Rewiaz and Services Ltd v Texaco (West Indies) Ltd*** CA, no 16 of 1997.

[48] In St. Vincent and the Grenadines the relevant legislation I found at Chapter 235. I need only to cite two sections of the Act for the present. They are Sections 5 and 7.

> "5 (1) The Governor-General may, if he thinks fit, grant to any alien a licence to hold land as owner, tenant or mortgagee for any estate or interest, either subject to any conditions or not:
> Provided that a licence shall be operative only as to the land described and as to the estate or interest specified therein, and shall be of no force or effect until registered in the office of the Registrar of Deeds.
>
> (2) On breach of any condition in a licence to hold land as owner, tenant or mortgagee, the estate and interest of the alien in the land or mortgage held under the authority thereof shall thereupon be forfeited to the Crown."
>
> "7(1) Land or a mortgage forfeited under this Act shall not vest in the Crown unless and until a judgment is obtained declaring the forfeiture; but on such judgment being obtained the title of the Crown shall relate back to and commence at the time when forfeiture took place.
>
> (2) A judgment declaring a forfeiture of land shall operate to vest in the Crown all the estate and interest of the alien in the forfeited land.
>
> (3) A judgment declaring a forfeiture of a mortgage shall operate to vest in the Crown all the estate and interest of the alien in the mortgaged land, subject to any right or redemption subsisting therein, and also to vest in the Crown the right to recover and receive, and to enforce all securities for, the mortgage money."

[49] In this case the Defendants obtained a licence to hold land on March 6, 1987. The licence is exhibited in the Trial Bundle at folio 16. It is No. 1800 of 1987. Conditions 4 and 5 are as follows:

"4. Chatham Bay Club Limited will construct a luxury class resort at Chatham Bay including:

(a) a large pavilion which will enclose two restaurants, seating 90 patrons and 50 patrons, respectively;

(b) a minimum of 55 guest rooms;

(c) other facilities.

5. A minimum expenditure on the cost of construction of E.C. $15 million within three (3) years of the grant of this licence."

[50] There is no dispute that conditions 4 and 5 were not effected. I make bold to say they were not even begun. There were no planning permissions given and no drawing submitted to the relevant authorities. As the schedules to the deeds will show the development was to be done in Union Island in the Southern Grenadines, a dependency of the State of Saint Vincent and involved in excess of 100 acres of land.

[51] In the course of the submission there was much said as to whether or not a licence is a contract. I did not find it necessary to express a view on that.

[52] The fourth and fifth conditions not being fulfilled and having regard to Section 5(2) cited above one could safely say, prima facie, forfeiture should follow. Learned Senior Counsel in the course of his submissions stated: "Once a breach is established forfeiture is a statutory consequence of the breach." Learned Queen's Counsel took objection to that statement in his reply by interjecting that the only basis upon which forfeiture can be obtained by the Government, is if they choose to bring the matter before the Court and establish a breach of the condition. What can safely be said is that the breach of the condition of a licence triggers the procedure of forfeiture.

[53] The cases referred to in paragraphs 45 to 47 above all recognize the principle of forfeiture. It may be considered harsh but that is the recognized law of the region. There was a difference of view between counsel as to the nature of the title of an alien. Learned Queen's Counsel for the Defendants submitted that there can be no argument that the Defendants have anything less than the fee simple and relied for that proposition on the Privy Council case of ***Young v Bess*** and followed by the other cases. It was the view of learned Senior Counsel for the Claimant that ***Young v Bess*** and the other cases are absolutely certain of one thing, that even if title is vested in the alien, it is a voidable title and not an absolute indefeasible title. I tend to agree with learned Senior Counsel.

[54] In one of his main defences to the action learned Queen's Counsel sets up waiver and estoppel. For that defence Counsel relied on the Prime Minister's verbal assurance given

to Mr. Hazen Richardson that the Government would not forfeit the Defendants' land. That is found at paragraph 12 ii of the amended defence as follows:

> "For this reason, in about July/August 1991 the then Prime Minister, the Right Honourable James F. Mitchell, gave a verbal assurance to Hazen Richardson (Director of the First and Second Defendants) to the effect that the Government would not bring any proceedings for forfeiture of the land subject to the licence for a period of at least 3 years."

[55] The pleading suggests to me that the assurance was limited and could not mean as learned Queen's Counsel submitted that it was open minded. In his witness statement Richardson states exactly what was pleaded. Under cross-examination Richardson admitted that he had nothing to indicate that there was a confirmation of the verbal assurance either to the Prime Minister or his partner, Mr. Doug Terman.

[56] The Defendants also relied on a letter dated 18th November 1991 written by the Permanent Secretary of the Ministry of Foreign Affairs, to Messrs. Hughes & Cummings on behalf of the Defendants. The letter is quoted briefly and the material portion is as follows:

> "I am directed to inform you that Cabinet deferred consideration of the grant of the extension of the Aliens Landholding Licence requested by Chatham Bay Association, to await the submission of new proposals by the company for the development of the area."

[57] The evidence revealed that the Defendants made one proposal to the Claimant that involved a cruise line purchasing the land. The Government rejected that completely. The Prime Minister himself wrote to Mr. Douglas Terman on May 28, 1991: "The Government will not consider an Alien Landholding Licence for a cruise ship operation with such a substantial area of land." One should notice that this new proposal was one allowing somebody else to take over the obligations of the Defendants, not they themselves, doing anything new.

[58] The Defendants rely also on what they term the inaction by Government. Counsel submitted: "The Government did just sit by and encourage or allow, permit the Defendants to continue finding investors, to continue to make expenditure in relation to the property."

[59] It seems to me that if the Defendants continued to find investors this was nothing different from what they were doing from the beginning and it was done to help them to effect the project which they had initiated. And it cannot be stated with any degree of conviction that the Defendants spent any money on the property between 1987 and the present time. They produced no account.

[60] Mr. Terman who was the dynamic force behind the project died in 1999. As learned Counsel for the Claimant has shown the Defendants are shell companies. They did not have regular board meetings or kept minutes and only on 29th March 2007 did they file corporate returns from the time of incorporation to the present. Mr. Richardson who was perhaps the next important person, as he testified, is happily located on another island, Petit Saint Vincent, owning and managing the P.S.V., that is the Petit Saint Vincent Resort. To spend to secure or clear your own property cannot be an expense for which the Claimant can be liable. If the Defendants allowed brush to grow to such a height that it became unhealthy or unsightly they could be liable to the health authorities.

[61] It seems to me that the Defendants are admitting that their land could have been forfeited earlier a year or two after 1990 but if the Government is gracious and patient even to the point of assisting them to get additional investors and new plans then forfeiture is out of the question. I cannot agree. In the letter of May 28, 1991 referred to above the Prime Minister also said –

> "If you are impatient with the lack progress in securing investors, perhaps you can offer the land to Government."

The Claimant wanted to give the Defendants every opportunity to fulfill their dreams.

[62] The Defendants relied on the classic case of ***Thomas Hughes v Metropolitan Railway*** [1877] HL (E) 439 at pages 448 and 450. Part of the head note of this case reads –

> "Where a notice to repair has been given, and the lessee makes an offer to sell his interest in the premises, and a negotiation takes place on that offer, the effect of that offer and the negotiation is to suspend the notice till the negotiation has been terminated, from which event alone the date of the notice can properly be calculated. Equity will relieve against an ejectment founded on the original notice."

[63] The above citation was the background to which the Lord Chancellor, Lord Cairns, at page 448; and Lord O'Hagan at page 450 made their observations. Lord Cairns said:

> "… but it is the first principle upon which all Courts of Equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results – certain penalties or legal forfeiture – afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one to the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties."

And Lord O'Hagan said:

> "I quite concur with Lord Justice Mellish that his proper course would have been to inform the Defendants, within a reasonable time, that failing to make a new proposal they should understand the negotiation to have been concluded and the parties relegated to their legal rights. This would have been a reasonable and equitable course: but it was not taken, and the Plaintiff must bear the consequences. I think that the judgment should be affirmed, and the appeal dismissed with costs."

I am not satisfied that this case advances the contention of the Defendants that the Claimant waived his rights to forfeiture and is accordingly estoppel.

[64] With respect to laches learned Counsel for the Defendants relied on the case of Lindsay Petroleum Company v Hurd [1874] L.R. 221 at pages 239/40. Learned Senior Counsel also referred to page 240. The head note of this case spoke of a contract between the parties, which, having been based on fraud, led the innocent party to sue for a recession of the contract. The Court held, that the contract must be wholly rescinded, the contract price repaid and the land reconveyed. Sir Barnes Peacock stated:

> "Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two

> circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval, which might effect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy. In this case the delay was at all events not of very long duration, because the conveyance to the company was dated about fifteen months before the filing of the bill; the whole purchase-money was not paid before that time; and there is nothing which would justify us in reckoning the currency of time from an earlier period than that conveyance. Neither were any acts done in the interval, as it appears to us, at all material to the equity between the parties. There was possession taken, no doubt, but it would be a very novel proposition that mere possession is to be a bar, so as to raise a counter equity in cases of this description. Nothing appears to have been done beyond the sinking of a single well, by way of trial, upon the ground. The sinking of that well, if the land is restored, can in no substantial way operate to the prejudice of the Respondents; and, if any profit had been derived from it, the Court of first instance offered an account of that profit; but it manifestly was known that there was none, for that account was not accepted. The situation of the parties having, therefore, in no substantial way been altered, either by the delay or by anything done during the interval, there is in these circumstances nothing to give special importance to the defence founded on time, even had there been such an allegation of facts in the pleadings as would have been proper, if it was meant seriously to rely upon this as a substantial defence to the suit."

[65] In my judgment though the delay in taking proceedings was lengthy it was done all along for the benefit of the Defendants in allowing them more time than the licence allowed to undertake and complete the project. And in my judgment there were not any acts done in the interval at all material to the equity between the parties. The defences of laches, acquiescence and delay like the defences of waiver and estoppel fail.

[66] The conditions in the licence cannot be said to be onerous or burdensome because they were submitted by the Defendants as performance clauses. The Prime Minister Right Honourable J.F. Mitchell in his letter to Hughes and Cummings dated 3rd February 1986 wrote: "The performance clauses will be as stipulated by your clients." Indeed they were less onerous than what was stated from "The Battleground" by letter written by Craig Yesse, one of the directors of the companies to the Honourable James F. Mitchell on November 2, 1985. One such example is whereas the condition speaks of construction costs of E.C. $15 million (which has the equivalence of approximately US$5,800,000) the application, as well as a letter from Hughes and Cummings to the Prime Minister dated

10th June 1986, speaks of construction costs of E.C. $22 million (which has equivalence of approximately US$8,600,000).

[67] The Defendants were not ignorant of the law of forfeiture. In Mr. Craig Yesse's letter to Mr. Hazen Richardson dated February 15, 1987 he states: "We understood that the Government has an existing law which allows the state of St. Vincent and the Grenadines to appropriate the land should the developer not live up to their licence obligations." And the knowledge of the Defendants' lawyers has to be imputed to their clients. In the letter written by Hughes and Cummings to the Permanent Secretary on 7th January 1987 they stated: "The latest request for a further clause would seem to be superfluous since Section 4(1) of the Aliens (Landholding Regulations) Act, Chapter 96 states – "On breach of any condition in a licence to hold land as owner in tenant or mortgagee, the estate and interest of the alien in the land or the mortgagee held under the authority thereof shall be forfeited to Her Majesty."

[68] The Claimant was not eager to forfeit the Defendants' land. The Prime Minister wrote to Mr. Douglas Terman on May 28, 1991, "If you are inpatient with the lack of progress in securing investors, perhaps you can offer the land to Government." Government's patience in this request cannot be interpreted as acquiescence. I dare say if by a windfall or stroke of luck the Defendants came up now with 100 million dollars in any currency, US or E.C. to continue the project, the Claimant would quickly discontinue the action even at the risk of paying the Defendants' costs. In a letter by the Permanent Secretary of the Ministry of Foreign Affairs in the office of the Prime Minister to Mr. Cummings dated 15th January 1987 he states he has been advised to inform him as follows: "We assume that the investors are ready to invest and that they are not to be sought. If the applicant cannot perform then we cannot grant the licence."

[69] In the course of his submission as well as in the defence learned Queen's Counsel reiterated that it was accepted by Government that the development as first envisaged could not be carried out as among other things, it depended upon investment by third parties which could not then be achieved; but in my judgment it could not be in the

contemplation of either Party that if the investment did not materialize the Defendant would retain the land to do as they like, seeing they had the fee simple.

[70] I do not agree that there was any obligation on the Claimant to impose further or other substituted conditions on the Defendants and the Defendants seem to be clutching at straws when they appear to make the Claimant responsible for Mr. Terman's passing.

[71] The Defendants alleged that the circumstances of the case evidenced among other things an agreement by the Government with the Defendants, and/or a variation of the conditions of the licence to the effect that no proceeding for forfeiture of the Defendants' land would be brought about without reasonable notice. I reject this motion of agreement as well as the dependent submission that the Claimant was to give notice to the Defendants before it instituted the proceedings. But to what avail would be such notice? I ask myself what could the Defendants do with the notice that they cannot do now. I cannot imagine a reply.

[72] In his address learned Queens Counsel for the Defendants submitted that the same principle, that the breaches in respect of the payment of the licence fees and the registration of the licence, were waived apply also to conditions 4 and 5. I cannot agree. The Defendants did not keep to the original time schedule for payment of the licence fees and registration of the documents. In each case they applied and were granted extensions. See correspondence at . The default as it were became cured. How can that principle apply to conditions 4 and 5 that were never even begun?

[73] I now pass to consider the further and alternative defence of the Defendants as set out in paragraphs 19 to 26 of the amended defence, that is, the constitutional defence.

[74] It is necessary to give a background on the law of acquisition of land in the Eastern Caribbean. It is present in all the territories. The law involves taking the property of one person for the common ground – for a public purpose, for example a road, a playing filed or school; a medical clinic for the community; a housing project for an expanding village or

the cutting up of a large idle estate by overseas owners, to give farmers who need land to sustain themselves and their family.

[75] Learned Senior Counsel has a Privy Council case in his bundle of authorities, ***Windward Properties Ltd and Government of Saint Vincent and the Grenadines*** found at 1996 1 WLR 279. But there was an earlier episode of that case. In the High Court Action 108 of 1987 between ***Windward Properties Lad and St. Vincent Horticulture Ltd against Clifford L. Williams and Satrohan Singh***. I was the presiding Judge who had come from Saint Lucia for the purpose.

[76] Mr. Williams was the Authorized Officer for the purposes of the acquisition of the Orange Hill Estate comprising 3,440 acres. Mr. Singh was Chairman of the Tribunal which was set up to value the land. Difficulties arose during the compensation matter and it was aborted. The Plaintiffs came to the High Court.

[77] I began my 1989 judgment, "This is a constitutional motion which arose as a result of action taken by the Government of Saint Vincent and the Grenadines under the Land Acquisition Act. In the course of my judgment I considered land acquisition cases from Grenada and Dominica, namely, ***Grand Anse Estates Ltd v His Excellency Sir Leo Victor de Gale***, Civil Appeal 3 of 1976; ***Thomas and McLeod v Attorney General of Grenada*** (1977) 23 WIR 491; and ***Blomquist v Attorney General of Dominica***, Privy Council Appeal No. 58 of 1985 (Advanced Copy).

[78] I said, "The cases all dealt with acquisition of property by virtue of similar legislation and in each case the land owner or occupier sought refuge from similar constitutional provisions to present deprivation of their property." The Plaintiffs were led by O.R. Sylvester Q.C., and the Defendant by Carl Hudson Phillips Q.C. I dismissed the constitutional motion and sent them back to the Tribunal to determine the compensation. I was affirmed by the Court of Appeal comprising Sir Lascelles Robotham and Justices of Appeal Eric Bish and George Roe.

[79] The Plaintiffs came back later and I returned from Saint Lucia. This time they had a writ and a constitutional motion differently couched but asking for the same relief. I dismissed both suits as being res judicata and was again affirmed by the same Court of Appeal.

[80] In my judgments I could not have referred to a later acquisition of the Marquis Estates in Saint Lucia owned by Harry Atkinson where as High Court Judge as I was Chairman of the Tribunal together with a retired English quantity surveyor and a well known land surveyor in Saint Lucia called Foche Modeste. Nor could I have referred to an acquisition of the Pinney Estate in Nevis when I later became a Justice of Appeal. I mention these to say that acquisition of land as mentioned in the constitution and as practiced in the region has a specific significance.

[81] Section 6 of the Constitution of Saint Vincent and the Grenadines speak of "property…. Compulsorily taken possession" as well as "property … compulsorily acquired." I am not aware of a legal distinction between the two phrases. In my judgment they mean the same thing, property taken for a public purpose.

[82] The Land Acquisition Act in St. Vincent and the Grenadines is found at Chapter 241. An important provision which is common in all the legislation is found at Section 3(3) as follows:

> "Upon the second publication of the declaration in the Gazette the land shall vest absolutely in the Crown."

This is even before, as in most cases, the Board to deal with compensation has been appointed. Has the land of the Defendants been taken or compulsorily acquired? On the contrary, the Defendants have been brandishing about that they hold the fee simple to them approximately 100 acres of land.

[83] Learned Senior Counsel for the Claimant in his submissions stated: "My Lord, we contend simply that forfeiture is not a compulsory acquisition and therefore is not sought by Section 6 of the Constitution for two reasons." Later he stated: "We respectfully submit that

forfeiture under the Aliens Landholding licence is not a compulsory acquisition entitling the Defendants to compensation." I agree.

[84] During his submission Counsel for the Claimant stated that the Claimant stands and falls by the last stated submission but he did not in fact maintain that position. However, I do. I hold there has been no acquisition to trigger Section 6 of the Constitution and I shall proceed no further along that route.

[85] Further, according to Black's dictionary 2004 8th Edition at page 677 forfeiture means "(1) The divestment of property without compensation. (2) The loss of a right, privilege, or property because of a crime, breach of obligation or neglect of duty. Title is instantaneously transferred to another, such as the government, a corporation or a private person… (3) Something (especially money or property) lost or confiscated by this process; a penalty". And according to Jowitt's dictionary of English law, "forfeiture" is defined as arising where a person loses some property, right, privilege or benefit in consequence of having done or omitted to do a certain act.

[86] Towards the end of his submissions learned Senior Counsel for the Claimant referred to the case of Caribbean Development (Antigua) Ltd and Electronic Technology International (Antigua) Ltd, Civil Appeal No. 13 of 2005 paragraph 20 where Justice of Appeal Gordon stated: "If one were to come to the opposite conclusion, then a horse and cart could be driven through the ordinary law of contract. A contracting party would then be able to rely on its own breach to force restitution from the other innocent party." The case is instructive.

[87] The Claimant is entitled to judgment as prayed in its claim form referred to at the beginning of the judgment. The Defendants are ordered to pay the Claimant's costs (in the amount of $20,000) such costs to be calculated in accordance with Part 65 of the Civil Procedure Rules 2000.

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Albert N. J. Matthew
HIGH COURT JUDGE (Ag.)