

ANGUILLA

IN THE COURT OF APPEAL

HCVAP 2006/008

BETWEEN:

EDWIN M. HUGHES

Appellant/Defendant

and

LA BAIA LIMITED

Respondent/Claimant

Before:

The Hon. Mr. Hugh A. Rawlins

Chief Justice

The Hon. Mde. Ola Mae Edwards

Justice of Appeal

The Hon. Mde. Rita Joseph-Olivetti

Justice of Appeal [Ag.]

Appearances:

Dr. John Roberts, QC, with him Ms. Jenny Lindsay for the appellant

Mr. Saul M. Froomkin, QC, with him Mr. Kenneth Porter and Ms. Michelle Smith for the respondent

2009: March 25;
2010: January 11.

Civil appeal – dispute as to the ownership of land – claim for injunctive relief and for specific performance – construction of agreements of sale and related documents – whether they constitute a valid contract binding on the parties – whether the claim is statute barred – whether the trial judge erred in holding that the agreement is not illegal as formed or performed – failure by purchaser to obtain an Aliens Landholding Licence – whether the learned judge erred in granting specific performance – Aliens Land Holding Regulation Act Cap. A50 of the 2000 Revised Statutes of Anguilla – Limitation Act Cap. L60 of the 2000 Revised Statutes of Anguilla – Registered Land Act Cap. R30 of the 2000 Revised Statutes of Anguilla

The respondent company, La Baia, instituted the claim herein in the High Court. La Baia alleged that a contract for the sale of a disputed lot of land, which binds La Baia and the appellant, Mr. Hughes, entitles it (La Baia) to the ownership of the land. La Baia sought injunctive relief against Mr. Hughes restraining him from continuing to construct a building on the land. La Baia also sought an order of specific performance directing Mr. Hughes to transfer the disputed land to it (La Baia), and costs. A judge of the High Court found that a valid contract for the sale of land exists, that the contract was binding on the parties and

enforceable against Mr. Hughes. Accordingly, the judge issued an injunction and an order of specific performance against Mr. Hughes. The judge also ordered Mr. Hughes to pay costs. In her judgment, the judge found that the claim was not statute barred under the **Limitation Act** Cap. L60 of the 2000 Revised Statutes of Anguilla because the substantive claims as well as the claim for damages accrued within the applicable limitation period. The judge also held that the relevant documents amounted to a contract for the sale of the land, which agreement was valid, legal and enforceable. Mr. Hughes appealed against these findings as well as against the judge's decision to order specific performance and to award costs against him.

Held: dismissing the appeal with costs to be borne by Mr. Hughes in the appeal:

1. The trial judge was correct in her finding that the **Limitation Act** does not apply to substantive claims for specific performance and injunctive relief by virtue of Section 3(7) of the **Limitation Act**. Additionally, inasmuch as the cause of action accrued in January 1996, the limitation period for bringing the claim for damages is 6 years and as the claim was filed in April 2001, the damages aspect of the claim was also not statute barred.
2. The learned trial judge did not err in finding that the contract for the sale of the disputed land was valid and binding upon the parties to this appeal.
3. The judge did not err in exercising her discretion to order specific performance notwithstanding that the purchaser does not hold an Aliens Land Holding Licence and there is a charge in favour of Caldwell Limited, a company that is not registered in Anguilla and which is beneficially owned by non-citizens of Anguilla, who also own La Baia. Caldwell is not a party to these proceedings. La Baia obtained an equitable interest in the disputed land under the contract, which is only voidable at the instance of the Crown. Since the Crown has taken no action it remains only for Mr. Hughes, the registered proprietor of the land, to complete the transfer in order for La Baia to obtain the legal interest in the land.

The principle in **Young v Bess** [1995] 46 WIR 165 [PC], at page 170, and in **Spiricor of Saint Lucia Limited v The Attorney General of St. Lucia**, Saint Lucia Civil Appeal No. 3 of 1996, 26th May 1997, at pages 14-15, followed.

JUDGMENT

- [1] **RAWLINS, C.J.:** This case arose out of a dispute over land, to wit, Block 17709B Parcel 23, West End Registration Section, Anguilla. The respondent, La Baia Limited, instituted the claim in the High Court against the appellant, Mr. Hughes. The disputed land was the subject of various agreements for sale, dealings and court proceedings involving the present parties to this appeal and other

parties/entities. It suffices for the present purpose to state that La Baia instituted the claim soon after Mr. Hughes commenced the construction of a building on the disputed land. La Baia sought an injunction against Mr. Hughes restraining him from building on the land. La Baia also sought an order of specific performance to compel him to transfer the land to it (La Baia). An interim injunction was issued against Mr. Hughes prior to the trial.

[2] The trial judge ordered specific performance against Mr. Hughes and directed him to complete the transfer of the land to La Baia by executing and delivering to La Baia an instrument of transfer in respect of the disputed land. In her judgment, the learned judge construed 2 written agreements and ancillary documents as constituting a valid contract for the sale of the land, which was binding upon the parties. The judge also issued an injunction restraining Mr. Hughes, whether by himself, his servant or agents, from carrying on any construction whatsoever on the said land. The judge further ordered Mr. Hughes to bear the costs of the proceedings to be assessed at US\$23,500.00 by reference to the purchase price of the land. This was done pursuant to rule 65.5, Appendix B of the **Civil Procedure Rules 2000** ("CPR 2000"). The trial judge held that the claim was not statute barred.

[3] Mr. Hughes appealed against these findings and orders. He sought an order to set aside the judgment and the order of the trial judge on a number of grounds, which essentially challenge these findings. The grounds of appeal will be considered against the background in these proceedings.

Background

[4] Isaac Richardson, deceased, was the father of Edward Richardson, deceased, who in turn was the father of Mr. Hughes, the appellant. Edward Richardson, his sister, Sylvia Bryson, and his brother, Nathaniel Richardson, were the 3 beneficiaries of Isaac Richardson. Mr. Hughes was the sole beneficiary of Edwards Richardson. The learned trial judge found that the Land Register shows

that, based on the Adjudication Record entered on 21st February 1975, the disputed land was first registered to the heirs of Isaac Richardson who died on 24th August 1946. The judge also found that the land remained so registered until 20th May 1982 when George Richardson, a brother of Isaac Richardson and uncle of Edward Richardson, became registered as the administrator of the estate of Isaac Richardson. George Richardson died in November 1987, but his name remained registered as the proprietor until December 1995. Louis Hodge, a half brother of Mr. Hughes, acting as attorney for Edward Richardson, was registered as the proprietor of the disputed land as Attorney/Administrator of Mr. Hughes in December 1995. At that time a charge was duly recorded on the disputed land in favour of Caldwell Corporation, a BVI company beneficially owned by Ms. Cheri Batson and Mr. Rosario Spadaro. Notwithstanding that the charge is still subsisting, Louis Hodge transferred the land to Mr. Hughes, without the consent of the chargee, as Section 67(g) of the **Registered Land Act**¹ requires.²

- [5] On 15th October 1982, Edward Richardson entered into a hand written agreement (“the First Agreement”) to sell seven (7) acres of a seven and a half (7½) acre lot of the disputed land to Ms. Cheri Batson of St. Maarten, Netherlands Antilles, “or a corporation to be designated by her”. Ms. Batson signed the agreement on her own behalf. Edward Richardson signed as seller and also as representative of his siblings, Nathaniel Richardson and Sylvia Bryson. It is common ground that Mr. Richardson and his siblings inherited the land from their father, Isaac Richardson.
- [6] Messrs. Rosario Spadaro and Jeremie Weinberg witnessed the First Agreement in St. Maarten. The signatures of Edward Richardson, Nathaniel Richardson and Sylvia Bryson appear on a copy of the First Agreement. US\$91,000.00 was stated to be the full purchase price in the agreement. This provided for a deposit of US\$10,000.00, the receipt of which was acknowledged in the agreement. However, it is common ground that US\$20,000.00 was eventually paid as the

¹ Cap. R30 of the 2000 Revised Statutes of Anguilla.

² See paragraph 6a-g of the judgment.

deposit under that agreement. This payment was evidenced by a receipt dated 3rd March 1983, signed by George Richardson, as Administrator of the Estate of Isaac Richardson.³ The receipt states "Received from La Baia Ltd., the sum of US\$20,000.00 deposit on account of a total purchase price of US\$97,000.00 for seven and a half (7½) acres registered as West End Section, Block 17709B, Parcel 23".⁴ It is noteworthy that La Baia, a company incorporated under the laws of Anguilla, which is beneficially owned by Ms. Batson and Mr. Spadaro, was an early player in the transaction. The parties had agreed for the sale of the land to Ms. Batson or to a corporation designated by her.

- [7] The First Agreement provided, as a condition, that the purchasers would obtain a building licence from the government in respect of the land. However, there was no stipulation as to the time within which the licence was to be obtained. The Agreement stated that failure to obtain this licence would render the Agreement null and void. The completion date for the transfer of the parcel of land was stated as 14th January 1983. There was no provision making time of the essence.
- [8] Some 3 years later, in April 1986, Edward Richardson realized that Ms. Batson had not obtained a building licence and he apparently intended to return the US\$20,000.00 deposit and rescind the Agreement. It is not clear whether he actually returned the deposit, but in a letter to Ms. Batson, Edward Richardson's solicitors stated that Edward no longer considered himself bound by the Agreement. However, in May 1986, Edward Richardson entered into the Second written Agreement with La Baia, which had paid the deposit under the First Agreement, and therein acknowledged the receipt of the US\$20,000.00 deposit as the deposit under the Second Agreement.
- [9] The Second Agreement was signed by Edward Richardson only as vendor in a dual capacity for himself and on behalf of his siblings, Nathaniel Richardson and

³ See receipt at page 138 of the Record of Appeal.

⁴ The agreement in fact stated 7 of the 7½ acre lot were to be sold for US\$91,000.00.

Sylvia Bryson.⁵ Mr. Spadaro signed the Agreement on behalf of the purchaser as its representative. Charles Davis signed as witness. No completion date was provided for in the second agreement.

[10] La Baia made 3 applications for an Aliens Land Holding Licence, in October 1983, February 1984 and February 1989. None of these applications was granted. By a letter of 4th July 1985 a licence was specifically refused until Mr. Spadaro fulfilled obligations, which were imposed on him in respect of another project.

[11] In his capacity as Administrator of the Estate of Isaac Richardson, George Richardson did the following after the execution of the Second Agreement:

- (1) He purported to release all right, title and interest to the disputed land held by the heirs and transferred to La Baia the right to pledge or mortgage the disputed property in like manner as if La Baia held legal title thereto. This was done by way of a general Power of Attorney in favour of a non-alien company called Caldwell Corporation Limited ("Caldwell"). The Power of Attorney was registered at the Anguilla Land Registry on 25th March 1987.
- (2) He delivered to La Baia a land transfer form and a charge form in blank to be filed with the relevant authorities in Anguilla.
- (3) He permitted the charge in the sum of US\$500,000.00 to be entered on the disputed land in favour of Caldwell.

[12] On 28th November 1995, Louis Hodge, a half brother of Mr. Hughes, was appointed as the new Administrator. In or about December 1995, Louis Hodge became the registered proprietor of the land. Following this, and without the consent of the chargee, as Section 67(g) of the **Registered Land Act** requires, in

⁵ Unlike the first agreement which three heirs signed.

January 1996, Mr. Hodge transferred the land to Mr. Hughes, who commenced building on the land until he was restrained by the injunction of 5th February 2002.

Was the claim statute barred?

- [13] This issue was raised in Grounds 5 and 6 of the appeal. I consider it first, because it is a threshold issue. It would determine this appeal, without more, in favour of Mr. Hughes, if this court finds that the judge erred in holding that the **Limitation Act**⁶ did not render La Baia's claim statute barred.
- [14] Learned counsel for Mr. Hughes submitted, in the High Court, that the claim was statute barred at the time when the action was instituted because the contract for sale was made almost 20 years ago. Counsel insisted that La Baia exceeded any limitation period for bringing the claim, whether that period is 12 years for the recovery of land or 6 years for simple contract. This submission pre-supposes that the cause of action accrued at the time when the parties entered into the contract which is the subject of the claim. Learned counsel in fact submitted that time would have begun to run when the Second Agreement was signed, and, on this basis, the claim should have been brought no later than May 1992, 6 years from that date. In my view these submissions are untenable because the cause of action could not have accrued at the time when the contract for sale was made.
- [15] In her judgment, the learned judge held, in effect, that the **Limitation Act** did not apply to the claims for injunctive relief and for specific performance. She also held that to the extent that a 6 year limitation period applies to the aspect of the claim for damages, the claim was instituted within the applicable period of limitation.⁷ In arriving at this decision, the learned judge found that the cause of action accrued on 12th January 1996, when Mr. Hughes became the registered proprietor of the land. In so finding, the judge accepted the obvious: that in essence the claim was for specific performance and injunctive relief. Section 3 of the **Limitation Act**

⁶ Cap. L60 of the Revised Statutes of Anguilla.

⁷ See paragraph 29 of the judgment.

provides the periods within which cases in contract, tort and some other reliefs should be instituted. However, Section 3(7) of the **Limitation Act** provides that the limitation periods contained in Section 3 do not apply to any claim for specific performance of a contract, for an injunction or for other equitable relief. The judge applied this provision and held, correctly, in my view, that the **Limitation Act** does not apply to these substantive claims. The trial judge held, additionally, that the limitation period for bringing an action for damages is 6 years and that the aspect of the claim for damages was not statute barred because the cause of action accrued in 1996.

- [16] The judge's analysis and findings that no aspect of the claim was statute barred were correct, in my view. It was the registration of the land in the name of Edwin Hughes and his subsequent actions in 1996 that made it necessary to seek injunctive relief, specific performance and damages. Even if there were a 6 year limitation for bringing a claim for specific performance and injunction as well, the claim would have been brought within the limitation period since it was instituted on 18th April 2001. I would therefore dismiss Grounds 5 and 6 of the appeal.

Was there a valid contract for sale?

- [17] The relevant statement of defence states that Edward Richardson had no power to enter into a binding agreement for the sale of the disputed land as the land was vested in the personal representative, George Richardson. This was apparently the basis on which the defence raised the issues of validity of the contract for the sale as well as whether the contract was binding upon the parties for whom the contract was purportedly made. The judge raised this as a discrete first issue. She held that the 2 written agreements, coupled with the ancillary documents, constituted a valid and binding contract for the sale of the disputed land. In Ground 2 of the appeal, Mr. Hughes contends that the judge misdirected herself and erred in this determination.

[18] The judge considered this issue in paragraphs 14-22 of her judgment. The reasoning could be best captured in the full reproduction of these paragraphs:

“(14) It is not disputed that at the time of the execution of the First and Second Agreements, George [Richardson] was the Attorney/Administrator and personal representative of Isaac. His duties would have been to the beneficiaries. In respect of the First Agreement, ER who signed on his own behalf and as agent for NR and SB were the persons beneficially interested in the Land. ER represented on his behalf and on behalf of NR and SB, whom he also stated he had authority to represent, that they were the owners of the Land. No distinction was made as between the legal and beneficial ownership. The legal title vested in the Attorney/Administrator, George. In any event, the signatures of SB and NR appeared on this agreement. No evidence has been led to show or cast doubt on the veracity of their signatures. Neither has any evidence been led which suggest that ER was acting without the authority of NR and SB in the transaction. ER similarly represented that he had authority to act on behalf of NR and SB in the Second Agreement. There is no evidence to suggest that the purchaser had reason to believe to the contrary.

(15) Counsel for the Defendant contends that the fact that there is no evidence that ER had legal title is reason for impugning the agreements. She has, however, refrained from addressing his beneficial title. She cites the lack of a power of attorney granted by George as Administrator, or by NR or SB, in respect of the First and Second Agreements and further, that there were no witnesses attesting the signatures of NR and SB or notarizing same on the First Agreement, and the lack of their signatures on the Second Agreement. Whilst these are all matters which may be taken into account, the fact of the matter in the case at bar, is that it is not any of the purported signatories seeking to challenge the signatures or want of authority, but rather, the Defendant, who was not present and has no knowledge whatsoever of the transactions. Whilst a Power of Attorney is invariably a method certain in proving an agency relationship, this does not mean that this is the only means by which an agency can exist. No evidence has been lead by the Defendant to refute the agency relationship as between ER and his principals and on whose behalf he expressly represented he was so acting.

(16) Counsel sought to rely on the case of **Fountain Forestry Ltd. v Edwards & Anr** [1974] 2 All ER 280. In that case, the widow and son of an intestate were both appointed Administrators of the Intestate's estate. The son contracted for the sale of the property which was expressed to be for himself and for the widow and

signed the contract for himself and the widow. In fact, the son had not consulted the widow prior to signing the contract and she had not expressly ratified the contract since, and she was reluctant to execute an engrossment of the contract. The court refused to order specific performance because the son, having bound the estate on the assumption that he had authority to sign as agent for her, which assumption was false, there was no contract to be enforced at all. The facts in the case at bar are distinguishable. There is simply no evidence suggesting that the assumption of authority of ER acting as agent for his co beneficiaries is false. None of them during their life time has sought to challenge it. No evidence has been brought forward refuting the assumption. A bald statement or suggestion does not suffice.

- (17) As it relates to George, from the evidence of Cheri Batson, she stated she first spoke to George sometime in early 1982, and he referred her to ER. George must be taken to have known all about the transaction and the agreements because he, as Administrator, issued a receipt for the deposit of \$20,000.00 referring to the Land and stating the total purchase price for the 7½ acres to be \$97,500.00. He must have in turn delivered this money to ER as ER issued him with a receipt referring to it as being toward his "*¼ share of the proceeds*" in respect of the Land. Implicit in that expression seems to be an acknowledgement by ER that each of the four survivor beneficiaries of Isaac's Estate was entitled to an equal ¼ share therein.
- (18) George went further than this. After the execution of the Second Agreement, George, as Administrator, presumably at the behest of the beneficiaries acting through ER for himself and NR and SB, executed the Charge and gave to Caldwell a general Power of Attorney over the Land. The Power of Attorney effectively meant that, at any time prior to the death of George, Caldwell could deal in any manner with the Land including disposing of it if it so wished. Also, as required under the Second Agreement, George executed and delivered in blank, a Land Transfer Form. George's signature on the blank form of Transfer was witnessed by Mr. Mitchell, an experienced legal practitioner at the time. These acts by George, taken together, amount, in my view, to a full and effectual adoption and ratification of the First and Second Agreements.
- (19) Counsel for the Defendant took issue with the execution of the Second Agreement by Mr. Spadaro on behalf of La Baia and say he had no authority as he was not an officer of La Baia. No evidence has been lead by the Defendant to substantiate that Mr.

Spadaro was not so authorised. There is nothing unusual in a company designating a person to execute a contract or other document on its behalf and such person so authorised need not be an officer of the company. Without having some inside knowledge as to what steps or actions La Baia took to authorise the execution by Mr. Spadaro it is very difficult to see how a bald statement to this effect could be of any value. There is no merit in this submission.

(20) Counsel for the Defendant submits that even if a contract contains all material terms but does not stipulate a date for completion it may nevertheless be unenforceable as not containing a provision as to date of completion [**Johnson v Humphrey** [1946] 1 All ER 460.]. It is well settled law that even though a date of completion is not provided for in an agreement, the law implies an obligation to perform the act within a reasonable time having regard to all the circumstances of the case [See: Chitty on Contracts 27th Ed. 21-017.]. The First Agreement contained a date when title was to be transferred being January 14th 1983, or sooner. The Second Agreement however, is said to be silent on the date of completion.

(21) The peculiarity in relation to the Second Agreement is that, in my view, a completion has, in effect, already taken place by virtue of the very terms of the Second Agreement. Paragraphs B and C are, respectively, in these terms:

"(B) The Seller is (sic) consideration for receiving said... (\$77,500) hereby releases all right, title, and interest in said parcel of land, giving and transferring to the Purchaser the right to pledge... 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 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 – at the appropriate time. ..."

(22) The full purchase price has been paid. The Administrator/Personal Representative executed and delivered in blank the Land Transfer. He also executed and delivered a Charge which has been duly registered and a Power of Attorney which was also registered. This power of Attorney is no longer effective as the Administrator has since died, but it would seem to me that the transaction was complete save for the perfection of the Land Transfer by registration, by the Claimant. For all these reasons I hold that the agreements coupled with the ancillary

documents constituted a valid and binding agreement for the sale of the Land.”

[19] Learned counsel for Mr. Hughes submitted, in effect, that the trial judge failed to actually construe the agreements and simply found that the agreements and the ancillary documents constituted a valid and binding contract for the sale of land. It appears that counsel was expressing a wish that the judge should have provided a fuller analysis on her construction of the contract, and perhaps should have determined whether any, and if so, what aspects of the first agreement still existed under the Second Agreement. It is my view, however, that the judge did as much as was required for the purpose of the case. She set out the salient terms of the 2 written agreements, in paragraphs 2, 3 and 4 of her judgment. She set out the actions which the seller undertook under the agreements in paragraphs 5 and 6 of the judgment. The fact, though, is that the context for counsel's submission is provided by the further contention that the first and second agreements are separate agreements which the judge should not have read together because Edward Richardson rescinded the First Agreement.

[20] In any event, it is not difficult to determine the terms of the contract, particularly on reading the 2 agreements. The terms of the Second Agreement indicate that Edward Richardson validated certain aspects of the First Agreement. Thus, in the first preamble to the Second Agreement the parties acknowledged that they had entered into a contract of sale for seven and a half (7½) acres of the very same Block and Parcel No. 17709B.23 in West End, which was the subject of the First Agreement. The seller acknowledges receipt of the US\$20,000.00 deposit that was received under the First Agreement in the document dated 3rd March 1983. The receipt stated that the deposit was for the full seven and a half (7½) acres, rather than seven (7) of the seven and a half (7½) acres as stated in the First Agreement. It signified the intention of the parties to sell the entire lot and this was confirmed under the Second Agreement.

- [21] The second preamble in the Second Agreement states that neither party to the (First) Agreement is in breach or default and that the said agreement is a valid and binding agreement between the parties. That, in my view, is the most definitive statement that the parties still intended to be bound by aspects of the First Agreement which were not inconsistent with the Second Agreement.
- [22] It is in the third and fourth preambles to the Second Agreement that the seller acknowledges receipt of the US\$20,000.00 deposit that the purchaser paid under the First Agreement. The seller also expressed the wish to receive the full payment for the land, notwithstanding that the seller had not yet transferred the legal title to the purchaser. The fifth preamble states that the purchaser wished to make the full payment to the seller. In my view, nothing turns on the fact that the purchase price in the First Agreement is stated as US\$91,000.00 and in the Second Agreement is stated as US\$97,500.00. The parties simply revised the purchase price.
- [23] It is noteworthy that the provision relating to obtaining a building licence was not repeated in the Second Agreement. In any event, time was not of the essence for obtaining this licence. However, this became a moot issue, in my view, in light of the validation afforded by the Second Agreement to the terms of the first contract. Time was not made of the essence for the completion of either agreement.
- [24] Further submissions by counsel for Mr. Hughes on the issue of the validity of the contract revolved around the question whether there was an actual validly executed transfer or conveyance of the disputed land to the purchaser. Thus, for example, learned counsel submitted that the learned trial judge failed to consider adequately Batson's evidence that the blank transfer form which was delivered to La Baia by George Richardson as personal representative, was not notarized although it was said that lawyer Mitchell witnessed it. Accordingly, stated counsel, George Richardson failed to deliver a validly executed transfer to La Baia. The learned trial judge was therefore misguided in concluding that completion of the

agreement had taken place. As a result, counsel submitted that La Baia should be prevented from enforcing the said agreements as they are void.

[25] Counsel for Mr. Hughes also contended that interest in land can only be transferred by the execution of a valid conveyance or contract in a deed between the parties. Counsel pointed out that Section 9(2) of the **Conveyancing Ordinance** states that such interests cannot be conveyed by bargain and sale and section 10 makes such transactions void for the purpose of conveying or creating a legal estate unless made by deed. Counsel also sought to rely on the formalities for transfer contained in section 162 of the **Registered Land Ordinance** and the **Companies Act**.⁸ Counsel insisted that a valid transfer must be done in the prescribed manner provided by the statute by completing the prescribed form and registration.

[26] In the first place, I agree with the submission by learned counsel for La Baia that the matters raised in the foregoing submissions were not pleaded in Mr. Hughes' defence. In the second place, it is my view that these submissions are wholly irrelevant to the issue of the validity of the contract. They are concerned with the question of registration amounting to a valid transfer of land and interests in land that results in a valid conveyance between the parties. The relevant question in this case, however, was whether the documents created a valid and enforceable contract for the sale of the disputed land. In this regard, I agree with the judge's analysis and conclusion that the contract for sale was valid and binding upon the parties to the contract. The question that arises then is whether the contract was binding upon Mr. Hughes against whom the court ordered specific performance.

Is the agreement binding on Mr. Hughes?

[27] Mr. Hughes was not a party to any of the agreements for the sale of the land to Ms. Batson or to La Baia. Notwithstanding this, the learned judge found that the

⁸ Cap. C65 of the 2000 Revised Statutes of Anguilla.

contract is indeed binding on him. In arriving at this conclusion she stated in paragraph 25 of her judgment:

"[25] The general rule of contract is that a person who is not a party receives no rights and incurs no obligation thereunder. Only those who have entered into the contract are able to enforce it. Contracts for the sale of land however, are normally an exception to this general rule. The basic rule is that the death of either or both of the parties before completion does not avoid a contract for sale of land. It remains enforceable by and against the deceased's personal representatives."⁹

[28] The learned judge stated as follows in paragraph 26 of the judgment:

"(26) In the case at bar, Louis Hodge being the last Attorney/Personal Representative, caused the Land to be transferred to the Defendant as the person entitled thereto on intestacy. However, it cannot be overlooked that Louis Hodge was merely the Attorney/Representative for the Defendant himself and ought not to be able to avoid being bound merely by virtue of interposing an agent as between himself in a representative capacity and accepting a transfer of the Land in his personal capacity, as the sole beneficiary. In effect, the Defendant's title is on the basis of being the heir or beneficiary of the estate of ER who had, by virtue of the disposition by sale of the Land inter vivos, divested himself of all interest he had therein. Section 23 of the **Registered Land Act** states in part as follows:"

"Subject to section 27, the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever, but subject –

- (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- (b)...
but -
- (c) nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee;"

[29] At the trial, counsel for La Baia contended that Edward Richardson did not have the power to enter into a binding agreement with regards to the estate of his late

⁹ Paragraph 25 of the judgment

father as the power was vested in the personal representative of the land, George Richardson. However, at paragraph 27 of the judgment, the judge stated:

“(27) Furthermore, George, the prior personal representative, may be said to have done all that he was required to do for passing legal title to the Land, having executed and delivered the Land Transfer form in blank requiring only to be perfected by the Purchaser for acquiring legal title thereto by filling up the same and submitting for registration. It is the purchaser’s legal estate in the Land which remains to be perfected. The beneficiaries have already obtained the proceeds of sale. The Defendant, registered as he now is as proprietor of the Land could only be said to be so holding as a matter of law for the benefit of the Claimant who holds the beneficial and thus the equitable interest therein. I accordingly hold that the sale of the Land is binding upon the Defendant and that he holds same on trust for the Claimant. Furthermore, it seems to me, construing section 27 of the Registered Land Act, that the Defendant, not being a proprietor by virtue of valuable consideration, holds the Land subject to the interests of the Claimant who holds the beneficial interest therein.”

[30] The trial judge considered section 27 of the **Registered Land Act** which states:

“ Every proprietor who has acquired land, a lease or a charge by transfer without valuable consideration shall hold it subject to any unregistered rights or interests subject to which the transferor held it...”

The judge found that Mr. Hughes, who became registered as the proprietor of the disputed land without valuable consideration, holds the land subject to the beneficial interest of La Baia. In these premises, the judge held that the sale of the land was binding on Mr. Hughes and that he holds the legal estate on trust for La Baia, who is entitled to the beneficial interest in the land.

[31] Counsel for Mr. Hughes contended that Mr. Hughes was not bound by the terms of the contract, first, because the contract was illegal, and, second, because the signatories to the agreements did not have the requisite authority. Counsel took issue with the signatories for the vendor as well as the purchaser.

Signatories on behalf of the vendor

- [32] The First Agreement was signed by the three surviving children of the deceased Isaac Richardson, the Second Agreement was signed only by Edward Richardson in a dual capacity for himself and on behalf of his two other siblings, Sylvia Bryson and Nathaniel Richardson.
- [33] Counsel for Mr. Hughes contended that Edward Richardson did not hold the legal title to the land. Therefore, in the absence of the signatures of the personal representative who held the legal title or the other beneficiaries, Sylvia and Nathaniel, he could not solely contract to sell the land. Counsel further submitted that Edward Richardson could not have acted on behalf of any or all of these persons to sign the Agreements in the absence of a power of attorney in his favour from the beneficiaries.
- [34] In paragraph 16 of her judgment, however, the trial judge opined that she found no evidence suggesting that the assumption of authority of Edward acting on behalf of his siblings is false. She noted that none of the siblings sought to challenge it and no evidence was brought refuting the assumption.
- [35] Counsel for Mr. Hughes submitted that the learned trial judge accepted the testimony of Ms. Batson that the Second Agreement embraced the agreements which had been arrived at between herself, Mr. Spadaro and Edward Richardson. Ms. Batson gave evidence that the signatures in the First Agreement were in fact that of Sylvia and Nathaniel and stated that Edward Richardson had them added because it was necessary in order to receive the monies and continue with the purchase. Ms. Batson however was not present at the time Sylvia and Nathaniel signed the First Agreement and could therefore not attest to whether the signatures were in fact theirs.
- [36] Counsel for Mr. Hughes submitted that La Baia would like the court to believe that while it was important for the other siblings to sign the First Agreement, this was

not the case with the Second Agreement even though the terms would extend particularly onerous obligations on them. In addition counsel argues that it is hard to believe that Edward Richardson would seek to bind himself and his siblings to this agreement given the problems which were created from the First Agreement, particularly with regards to obtaining a building licence.

- [37] Counsel contended that the judge erred by not giving sufficient consideration to these circumstances which were unfair to the beneficiaries. In the absence of incontrovertible evidence like a power of attorney specifying that Edward and George Richardson had the authority to act, the learned trial judge should have drawn the inference that the other siblings did not agree to the terms of the Second Agreement. In my view, this submission is untenable, especially as there is evidence that those siblings received payments towards their interest in the land. I also agree with the submission by learned counsel for La Baia that the learned trial judge was correct in her conclusion as there was no evidence to show that Edward Richardson was not authorized to act on behalf of his siblings Sylvia and Nathaniel as this issue was never challenged by the siblings.

Signatories on behalf of the purchaser

- [38] Ms. Batson signed the First Agreement as purchaser. It will be recalled that the purchaser, as stated in that agreement was Ms. Batson or a corporation to be designated by her. La Baia, which she owns beneficially, with Mr. Spadaro, subsequently paid the deposit under that agreement. Mr. Spadaro signed the Second Agreement on behalf of La Baia.
- [39] Counsel for Mr. Hughes argued that the normal practice is for the designated person to sign in accordance with the legal authority, which in this case would be the **Companies Act** and the **Registered Land Act**. Counsel further contended that although Batson and Davis gave evidence that Batson and Spadaro were joint beneficial owners, the primary evidence in the form of the certificate of

incorporation, annual returns and other company documents show that the respondent company was not in existence at the time of the execution of the First Agreement.

[40] Counsel for Mr. Hughes also argued that Spadaro purportedly became a beneficial owner by declarations of trust some 12 months after the execution of the First Agreement. According to counsel, he could not have been an authorized agent at the time of the signing of the Agreement. Additionally, submitted counsel, Spadaro's name was not entered on the company register as required by sections 47 and 49 of the **Companies Act**. According to counsel, declarations of trust are not to appear on the register and the register is to be treated as *prima facie* evidence of any matters directed or authorized by the Act. No further evidence has been presented of even for instance, share certificates to show evidence of title as required by Section 55 of the **Companies Act**. Counsel therefore submitted that in the absence of prima facie evidence of Batson and Spadaro's beneficial ownership of La Baia or even that they were officers at the time of the Agreements the learned judge should not have accepted that they were authorized to act on behalf of La Baia to sign the Agreement.

[41] In response counsel for La Baia submitted that, by its conduct, a corporation may signify its intention to be bound by a contract entered into before it came into existence. Counsel further submitted that from the outset La Baia continuously signified its intention to be bound by the Agreements. At trial Ms. Batson testified that she and Mr. Spadaro were the beneficial owners of La Baia. The record shows that counsel for Mr. Hughes indicated at the trial that there was no dispute regarding that beneficial ownership.

[42] The learned trial judge found that there was no evidence led by the appellant to substantiate that Mr. Spadaro did not have the requisite authority to sign the Second Agreement on behalf of La Baia. The judge also found that there was nothing unusual in a company designating a person to execute a contract or any

document on its behalf and such a person need not be authorized as an officer of the company. Without any evidence to substantiate the assertion of lack of authority, the trial judge was correct, in my view, to find that the authority of Mr. Spadaro to sign the Second Agreement on behalf of La Baia¹⁰ is unimpeachable.

Illegality, enforceability and specific performance

[43] Grounds 1, 3, 4 and 7 of the appeal raise the related issues of illegality, enforceability and specific performance. I shall consider them compendiously because these grounds are ultimately intended to impeach the issue of the order of specific performance against Mr. Hughes.

[44] The issue of illegality arises from Ground 1. This ground states that the judge erred in that she did not hold that the agreement for the sale of the disputed land was illegal as formed or as performed. Grounds 3 and 4 raise the question of enforceability. Ground 3 states, in effect, that the judge erred in not addressing her mind to the unenforceability of the contract while Ground 4 states that the judge's finding that the agreement is enforceable is against the weight of the evidence. Ground 7 of the appeal states that the learned judge erred in determining that La Baia is entitled to specific performance of the agreement. Counsel for Mr. Hughes raises these issues primarily on the basis that the failure by La Baia to obtain an Aliens Land Holding Licence and the presence of the charge on the land in favour of Caldwell renders the contract illegal and unenforceable by specific performance.

[45] In paragraph 30 of the judgment, the learned judge stated as follows:

"[30] The Claimant submits it is entitled to specific performance which may be made with or without conditions. The Defendant contended that the Agreements are illegal, invalid and unenforceable. I have found nothing illegal in the agreements as formed or in their performance. The Claimant made application for a licence under the Act, but was told in 1985 that a licence

¹⁰ Paragraph 19 of the High Court judgment.

would not be issued until certain matters regarding another unrelated property had been concluded. The evidence is that the Claimant has continued its efforts to obtain a Licence for the Land. The last indication which appeared favourable was in 2001."

This was a reference to communication dated 31st July 2001, in which the Government of Anguilla indicated that there seems no reason at this time why it should not look favourably upon an application on behalf of La Baia to permit it to hold the disputed land.

[46] The judge continued to consider relevant provisions of the **Aliens Land Holding Regulation Act**, at paragraph 31 of the judgment. She stated:

"[31] Section 3 of the Act says, in effect, that no land in Anguilla shall be held by an unlicensed alien and any land so held shall be forfeited to Her Majesty. It is well settled law that forfeiture is not automatic. The title remains vested in the alien until such time as a judgment declaring forfeiture has been obtained. Land is not defined in the Act but under the Registered Land Act "Land" is said to include land covered with water, all things growing on land and buildings and other things permanently affixed. 'Interest' in land includes absolute ownership of land. Section 9 of the Act specifically recognised trusts which may arise in certain instances which were expressly excluded from the operation of the Act. Section 9 of the Act sets out in part as follows:

(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)

(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 3 months after that payment, the property sold is vested in the purchaser or his interest therein is extinguished;"

[47] In paragraphs 32 - 36 of the judgment, the learned judge considered the effect of the **Aliens Land Holding Regulation Act**, particularly section 9, and the applicable principles, in the context of the present case. She stated:

"(32) It seems to me that section 9(3)(b) of the Act embraces an alien purchaser under an agreement for sale of land recognising the well established principle of law that a purchaser under an Agreement for sale upon entering into the Agreement, once in proper form, acquires an equitable interest in the land. It is also to be noted that the section speaks of 'any interest' in land. It may be argued that this is sufficiently wide as to include also, an equitable interest.

(33) In the case at bar, all the purchase monies have been paid well in excess of three (3) months and the legal title to the Land is not yet vested in the purchaser. It cannot be said if and when a licence will be granted. In the meantime, the beneficiaries who had the benefit of the proceeds of sale are all deceased save, possibly, for one.

(34) In **Equipment Rental and Services Ltd -v- Texaco [West Indies] Ltd.** the Eastern Caribbean Court of Appeal ordered the delivery of a new lease to a lessee having exercised the option to renew, notwithstanding that the Lessee's Alien Land Holding Licence under the old lease had expired and no licence had been obtained for the new lease on the basis that there is no provision for a lacuna of ownership of land and once the Vendor has received the consideration for sale he has no further interest in the land. I consider that this authority accords with my view earlier expressed that George, as Administrator/Personal representative, had already executed and delivered a transfer of land in favour of the purchaser as the consideration for the sale had already been received by the beneficiaries, and in so doing considered themselves as having no further interest in the Land.

(35) Accordingly, given that George is now deceased and the Defendant has caused himself to be placed on the land register as proprietor of the Land, I think it only proper to order that he executes and delivers an instrument of transfer in respect of the Land to the Claimant. It is for the Claimant to bring itself into compliance with the Act or suffer the consequences thereof.

(36) As has been observed, only passing reference has been made to the charge for the limited purposes herein since I do not consider these proceedings to be proceedings in relation to the charge. Further, Caldwell is not a party to this action.”

[48] The judge was correct, in my view, in her analysis and finding on these issues. Her finding exemplifies the basic principle, stated in a line of authorities including **Young and Another v Bess**,¹¹ **Equipment Rental and Services Ltd v Texaco [West Indies] Limited**¹² and **Spiricor of Saint Lucia Limited v The Attorney General of St. Lucia**,¹³ that title to property which an alien holds remains in the alien and is voidable only at the behest of the Crown. It is voided when the Crown obtains judgment for the forfeiture of the interest that the alien holds in the land pursuant to the applicable alien landholding statute. The Crown has made no such application in relation to the disputed land.

[49] In my view, the judge was correct that the charge does not render the contract illegal or unenforceable by way of specific performance because the charge is not the subject of this case and the chargee, Caldwell, is not a party to these proceedings. Further, I do not agree with counsel for Mr. Hughes that the judge should have considered that the charge made the contract illegal and unenforceable because the charge was a sham and possibly a fraudulent transaction. Fraud was neither pleaded nor proved. Additionally, the contentions by Dr. Roberts, QC, that the contract is void and unenforceable because of notions of separation of powers; the unavailability of the subject matter, and because the proprietors of La Baia and Caldwell were the same persons and they knew that they were flouting the law are, in my view, irrelevant in the context of the issues that were pleaded and considered in this case.

[50] It is trite principle that an appellate court will not interfere with the exercise of discretion by a judge to issue an order of specific performance unless the exercise

¹¹ (1995) 46 WIR 165 [PC], at page 170.

¹² Civil Appeal No. 16 of 1997 (Eastern Caribbean Supreme Court, Commonwealth of Dominica).

¹³ Saint Lucia Civil Appeal No. 3 of 1996, 26th May 1997, at pages 14-15.

of discretion is based on a misapprehension of the law or evidence adduced or where a wrong inference is drawn by the trial judge. In my view, there are no grounds arising from these principles upon which this court may set aside the judge's decision to issue the order of specific performance.

[51] In the foregoing premises, I would dismiss grounds 1,3,4 and 7 of the appeal, and, in summary, dismiss the appeal on all grounds and affirm the decision and order of the learned trial judge.

Costs

[52] The respondent, La Baia, has prevailed on all issues in this appeal. The general rule, contained in rule 64.6 of **CPR 2000**, is that a successful party is entitled to costs. Under the said rule, the court may in certain circumstances order a successful party to pay all or part of the costs. However, there are no circumstances in this case that provide a basis on which this court may not apply the general principle. Accordingly, the appellant, Mr. Hughes shall bear the costs in this appeal in accordance with rule 65.13 of **CPR 2000**. This is US\$15,666.67, or two thirds of the US\$23,500.00 costs awarded in the High Court.

Summary of order

[53] In summary then, the order on this appeal is that the appeal by the appellant, Mr. Hughes, against the judgment and order in the High Court proceedings on 2nd June 2006, is dismissed, and, accordingly, that judgment and order are affirmed, with US\$15,666.67 costs to be paid by Mr. Hughes to the respondent, La Baia.

Hugh A. Rawlins
Chief Justice

I concur.

Ola Mae Edwards
Justice of Appeal

I concur.

Rita Joseph-Olivetti
Justice of Appeal [Ag.]