SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2005/0544

BETWEEN:

RIVER DOREE HOLDINGS LIMITED

Claimant

and

THE ATTORNEY GENERAL OF ST. LUCIA

Defendant

Appearances:

Mr. Stanley Marcus, SC (of the Trinidad & Tobago Bar) and
Ms. Kimberley Roheman for the Claimant
Mrs. V. Georgis Taylor Alexander Solicitor General with Ms. Jan Drysdale
Crown Counsel and Mr. Leslie Prospere Crown Counsel for the Defendant

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2009: August 17, 18, 19, 20, 21;
November 18;
2012: July 30.

JUDGMENT

Historical Background

[1] **GEORGES J. [AG.]**: On 20th February 1987 the Government of St. Lucia ('the defendant') entered into a Lease Agreement with the claimant River Doree Holdings Limited ("the company") in which it purported to lease 1,337 acres of land situate in the Quarter of Choiseul and Laborie for a term of 50 years with an option to renew for a further period of 25 years. The lease also contained an option for the claimant to purchase the lands "at any time after the end of the tenth year of the term thereby created and prior to the expiration of such term by giving notice in writing to the Government of its desire to purchase the absolute ownership of the lands and buildings then subject to the lease in which event ... ... the Government

will forthwith execute in favour of the Lessee a Deed of Sale of the lands and buildings then subject to the lease in a form to be settled by lawyers for the Government and the Lessee."

[2] By letter dated 10th January 1997 addressed to Mr. Cosmos Richardson, Permanent Secretary in the Ministry of Agriculture and Lands Mr. Stephen McNamara acting on the instructions of his client River Doree Holdings Limited wrote giving notice in accordance with Clause 9(9) of the Lease of the company's desire to purchase the absolute ownership of the lands and buildings which constituted the remainder of the property then in the possession of the company River Doree for a purchase price of EC$10.00 in accordance with the terms and conditions of the Lease adding that his client's right to purchase those lands became exercisable at the end of the 10th year of the Lease to wit on the 23rd day of October 1996.

[3] Government refused to convey and after protracted negotiations and extensive exchange of correspondence between the parties and their legal advisers and with Government alleging that there were breaches of covenants of the Lease by River Doree and declining on that account to execute a Deed of Sale of the remaining lands of the Lease to the company, the claimant's Solicitors (Messrs McNamara & Co.) finally on 14th June 2005 gave Notice of Intention to the Honourable Attorney General to file suit pursuant to Article 28 of the Civil Code of Procedure and Section 13 of the Crown Proceedings Ordinance against the Government of St. Lucia for breach of the Lease Agreement by its failure to execute a Deed of Sale and to convey the remaining lands of the Lease to the claimant.

The Claim

[4] In these proceedings the claimant seeks inter alia a declaration that it is entitled to have the lands then in its possession transferred to it by Government at any time after the 10th year of the term on payment of the prescribed price of EC$10.00. Government on the other hand contends that on the basis of various reports and other information available regarding the performance by the company of the

terms and conditions of the Lease including the Development Programme that the company had failed to carry out the said terms and conditions satisfactorily and either no longer wished to or had the capacity to perform its obligations under the Lease.

[5] A declaration is also sought that the claimant on the 10th day of January 1997 became legally entitled to the grant of an Alien's Licence by the Government of Saint Lucia for the purpose of holding the freehold interest in the said lands and that as of the same date the Government of Saint Lucia became a trustee on behalf of the claimant in respect of the said lands and remained and continues to remain trustee thereof on behalf of the claimant.

[6] Damages for breach of the terms and conditions contained in the said Deed of Lease between the Crown and the claimant as well as interest and costs and such further and other relief as may be just are also claimed.

Preliminary point raised by Defendant

[7] On a pre-trial preliminary point the defendant ("Government") applied to the Court for a ruling as to the true construction of Clause 9(9) of the Lease which created the option to purchase and which in a sense lies at the heart of this dispute.

Clause 9(9) stipulates that:

> "At any time after the end of the tenth year of the term hereby created and prior to the expiration of such term The Lessee may give notice in writing to The Government of its desire to purchase the absolute ownership of the lands and buildings then subject to this Lease in which event subject to sub-clauses (10) (11) and (12) below The Government will forthwith execute in favour of the Lessee a Deed of Sale of the lands and buildings then subject to this lease in a form to be settled by Lawyers for The Government and The Lessee so as to be consistent with the obligations of the Lessee in this Lease and to enable restrictions and positive obligations for the benefit of the River Doree Holdings Limited Development to be imposed and enforced by The Government and The Lessee."

[8] Master Brian Cottle (as he then was) opined at paragraphs 7 and 8 of his decision rendered on 27th October 2006 that:

"[7] The clause in question in my view is quite clear. It obliges the defendant to convey to the claimant, the lands which are the subject matter of the lease once certain conditions are met. The claimant's position is that the relevant conditions are to be found at clauses 9(10) 9(11) and 9(12) only.

[8] The defendant on the other hand urges that the lease must be read as a whole. The true intent and meaning of the option to purchase can only be understood if the Clause is read in context."

[9] Counsel for the claimant argued that the option to purchase was separate and distinct from the lease itself but although agreeing with the submission and holding that there was no bar to enforcing an option to purchase even if a lessee has breached a condition of the lease, the Master nevertheless held that in construing the meaning of the option itself regard must be had to the preamble of the lease at letter E which reads:

> "The Lessee at the end of the first ten (10) year period of this Lease will be permitted by the Government to purchase the then remainder of the land and buildings in Schedule 5 provided The Lessee has satisfactorily carried out the terms and conditions of this Lease including the Development Programme for the sum of East Caribbean Currency Ten Dollars (EC$10.00) and The Government will grant to the lessee a licence under the Aliens (Landholding Regulation) Laws of Saint Lucia to hold as owner such lands and buildings."

[10] The importance of the preamble to the parties the learned Master noted was emphasized by the fact that it is here that the parties have provided for payment of the lease rent. I fully agree.

[11] In conclusion the Master held that read in conjunction with Clause 9(9) it was clear that **the option to purchase was and is conditioned upon the Lessee having satisfactorily carried out the terms and conditions of the lease including the Development Programme**. I fully concur. (Emphasis supplied)

[12] Further Clause 9(9) is specifically made subject to Clause 9(11) which requires the defendant to grant to the claimant a Licence under the Aliens (Landholding Regulation) Laws free of charge which was to contain conditions "**designed to ensure that so far as practical the Development Programme, on pain of**

forfeiture of the said lands and buildings, shall be carried out in accordance with the terms and conditions of this Lease." I wholeheartedly agree and that in my view underscores the core of the Lease Agreement. (Emphasis supplied).

The Issues

[13] As indicated earlier the claimant's claim is for a declaration that it is entitled after the expiration of ten (10) years from 24th October 1986 to have the title to the subject lands then in its possession conveyed to it in accordance with the terms and conditions of the Lease Agreement dated 20th February 1987 having discharged its obligations either wholly or substantially arising under the deed of lease and having validly exercised its option to purchase/acquire the said lands (described in the Lease Agreement as 1,337 acres) by notice in writing dated 10th January 1997 to the defendant/lessor.

Defence

[14] The defendant resists the claim on the basis that the claimant failed to discharge its obligations satisfactorily more specifically those set out in clause 9(11) of the Lease Agreement relating to the granting to the claimant of an Alien's Landholding Licence containing conditions designed to ensure that as far as practicable the Development Programme, on pain of forfeiture of the said lands and buildings, shall be carried out in accordance with the terms and conditions of the lease. The claimant contends that these may be described as conditions subsequent to its grant.

[15] Surely the grant of an Alien's Licence to hold property as owner as referred to in clause 9(11) of the Lease Agreement cannot be construed to be an automatic grant since the grant of the Alien's Licence in this case would invoke the exercise of a future executive discretion the exercise of which could not be circumscribed by an agreement entered into by hand.

[16] The claim is further opposed by particulars set out at paragraph 15 of the defendant's defence which alleges failure by the claimant:

(i) to submit to and comply at all times with the Development Programme and any modification thereto as required by Schedule 3 of the Lease Agreement;

(ii) to follow a condition of the lease with regard to the sale of farmlands, and to have in fact sold more farmlands than was stipulated in the lease;

(iii) to adequately or at all construct a proper road infrastructure;

(iv) to adequately or at all adhere to the production program specified in the lease including but not limited to Cocoa, Fruit Trees and Pineapple Production;

(v) to adequately or at all implement the production program with respect to animal husbandry detailed in Schedule 6 to the said agreement;

(vii) to implement the production program with respect to Compost made from pig-dung, coconut-husk and waste material;

(vii) to adequately or at all implement the Irrigation Scheme as stipulated by the Agreement

(viii) to adequately or at all encourage the emergence of the Farmers' Cooperative;

(ix) to adequately or at all implement effective management practices with the resultant effect of low yields in crop output.

Counterclaim

[17] By way of counterclaim the defendant contends that it had devised a specific development plan for the area where the property is located and had acquired and leased it to the claimant specifically to execute its development plan.

[18] In breach of its obligations the claimant failed adequately or at all to fulfill the obligations contained in the Lease Agreement the defendant asserts and failed to explore crop and agricultural methods to revolutionize the agricultural sector as hoped/intended with the result that the defendant was itself obliged in the public interest to acquire the remaining portions of the land leased to River Doree for a

public purpose to wit: Land Reform, Housing and Agricultural Development Conservation and Tourism Development.

[19] So that the crucial issue/question which falls to be determined and on which this case essentially hinges is whether the claimant did in fact discharge its obligations satisfactorily or substantially in respect of the Development Programme the terms and conditions of which are therefore germane to these proceedings.

Claimant's Opening Address

[20] Senior Counsel for the claimant in his opening address as well as in his closing submissions submitted that an option to purchase is collateral to independent of and not incidental to the relationship of Landlord and Tenant. Unless performance of all the stipulations in the lease is made a condition precedent he argued it was not essential that the Tenant should have performed all the stipulations of the lease. That is as a general rule true.

Acquiescence

[21] Senior Counsel also raised the issue of acquiescence and estoppel contending that from the inception of its operations the claimant company kept the defendant apprised of all adjustments, development plans and programmes, obtained approval and endorsements and received no objections from government when adjustments/modifications to the Development Programme were necessary. Furthermore the defendant's knowledge of the claimant's operations without complaint or objection throughout the initial ten-year duration of the lease constituted acquiescence on the part of the defendant and estopped it from complaining at that stage or point in time. An estoppel is used to prevent a party from insisting on his strict legal rights, when it would be unjust to allow him to do so. In essence, it operates as a shield and not as a sword.[1]

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[1] Amalgamated Investment & Property Co. Ltd (In liquidation) v Texas Commerce International Bank Ltd. [1982] Q.B. 84.

Mistake

[22] The issue of mistake was also canvassed by Mr. Stanley Marcus, SC who alleged that the actual acreage of the subject lands was in fact 1,137 acres and not 1,337 acres as stated in the Lease resulting in a shortfall of 200 acres of available arable land which was quite early in the tenure brought to the defendant's attention and would have inhibited the cultivation of a specific number of acres to be allotted to various crops. The claimant assumed that the defendant genuinely believed that the 1,337 acres stated in the lease actually existed on the ground. This being the bona fide belief of the claimant, Counsel submitted that the principles governing mutual mistake and abatement would be applicable referring to **42 Halsbury's Laws 4th Edition** paragraph 118 which states that where the vendor has not got the interest he has agreed to sell the purchaser is in general entitled to take such interest as the vendor has, subject to an abatement of the price, notwithstanding that the purchaser obtains an interest materially different from that which he agreed to buy. Clearly this is not only good law but good sense depending on the cogency of the evidence adduced by the claimant.

Substantial Performance Alleged

[23] Senior Counsel finally contended that on the basis of the detailed account of the claimant's operations in their various aspects over the initial 10-year period of the lease and beyond there had been substantial performance of the claimant company's obligations and that the doctrine of substantial performance consequently applied and was relied upon by the claimant so that any failure on its part to specifically comply with the terms and conditions of the lease as regards the Development Programme and Development Plan should be partly attributed to the acts and/or omissions of the defendant/Government – the issue being one of degree for the Court to decide. Again it will of course be necessary to sift and weigh the claimant's evidence as well as the defendant's in order to arrive at a proper determination of that issue.

[24] In that regard/context reference was made to **9 Halsbury's Laws 4th Edition** paragraph 475 which reads thus:

> "**475 Substantial Performance.** The rigour of the law on exact performance of an entire obligation is in some cases mitigated by the doctrine of substantial performance, whereby a party who has performed his obligation except for matters of a minor character will be allowed to enforce the obligation of the other party subject to a counterclaim for damages in respect of the defects."

I would only add that this is eminently reasonable.

[25] Learned Senior Counsel further submitted that even if the entire performance of the claimant's obligations had been a condition precedent to payment, taking the benefit of the work by the other party would be tantamount to waiver of the condition. In the instant case Counsel pointed out that the Government of St. Lucia (the defendant) took the benefit of the claimant's operations over the years and having regard to the averments of the claimant if accepted or established the claimant would be entitled to rely and in fact relied on the doctrine of substantial performance. So that the resolution of this claim inevitably turns on a close analysis and evaluation of the evidence adduced by the respective parties and of course the applicable law.

Terms and conditions of the 50-year Lease Agreement

[26] Central to these proceedings as stated at paragraph 1 of this judgment is the Lease Agreement entered into by the defendant ("Government of St. Lucia") and the claimant River Doree Holdings Limited ("the company") on 20th February 1987 crucial to which is Clause 9(9) which provides that on expiration of 10 years, title to the property would be conveyed to the claimant company subject to the claimant executing the lease consistent with the Development Programme. It is therefore beyond doubt that the satisfactory implementation of the Development Programme by the claimant was of paramount importance in the Lease Agreement as it was plainly a prerequisite to exercise of the option to purchase by the claimant on the expiration of the initial ten year term.

The Development Programme. What really did this entail?

[27] The objectives of the Development Programme were essentially to:

(i) transform the Leased Premises into a modern highly productive farm area;

(ii) work for a well-proportioned division between domestic food production and export production; and

(iii) promote modern scientific agricultural methods and technology in combination with the best of traditional farming methods of the area.

[28] In furtherance thereof the Development Programme specified the claimant's obligations thus:

(a) Three hundred (300) acres of the Leased Premises forming part of Parc, River Doree, Desgatier, La Perle, Londonderry and Mont Lezard Estates will be cut up in 5 acre lots and in conjunction with the Government sold to local peasants on very favourable conditions;

(b) Five (5) acres of the Leased Premises around Balca and 5 acres around Gayabois will be cut up into housing lots;

(c) People already living on the Leased Premises will be offered to buy a piece of land around their house;

(d) The remaining land of the Leased Premises will be transformed into a model farm.

[29] In the implementation of the above the following were to be addressed:

(i) The surveying of 250 acres of land which were to be divided into approximately 50 lots and the construction of a road through this area by the Lessee;

(ii) The remaining lands were to be run as a core farm by the Lessee in accordance with the objectives previously described;

(iii) The formation of a Farmers' Association based on voluntary participation, to work for the common interest of the farms at River Doree Holdings Limited such as:

- Promotion of roads, water and electricity supplies;

- Buying together in bulk for a better bargain on fertilizer, seeds, chemicals, etc.
- Running of a better farm through the establishment of workshops, purchase of machinery tractors and trucks.

[30] The Development Programme also stipulated the cultivation of bananas, pineapples, fruit trees, cocoa/coffee and coconuts and targeted that by 1991 River Doree Holdings must have established the following:-

(i) 400 acres of bananas,

(ii) 150 acres of pineapples,

(iii) 90 acres of fruit trees,

(iv) 100 acres of cocoa/coffee,

(v) Maintain 80 acres of coconuts already established on the farm.

(vi) Animal husbandry – a pig farm to produce an estimate of 20 pigs per week and the production of compost to meet 50% of the manurial needs of the estates in 1990;

(vii) Irrigation – the aim being to be able to irrigate 350 acres of dry lands at River Doree and Desgatier Estates.

[31] Out of the 1337 acres of land comprising the River Doree Holdings, 820 acres were targeted for full time production by the end of 1991 while 300 acres were to be allocated to small farmers.

[32] Of particular significance is the fact that in the evidence at trial the claimant (Mr. Hofdhal) admitted that it had instructed its Attorneys (Messrs McNamara & Co.) to draft the lease agreement and had identified the deliverables expected under the agreement after a thorough assessment of the estate/property by its experts of the soil type and topography to determine its commercial and agricultural suitability/potential.

Government's Vision

[33] Government's Vision as revealed by the witness statement and testimony of Dunley Auguste the then Deputy Permanent Secretary in the Ministry of Agriculture was for use and rationalization of the lands of the Estate Holdings as follows:-

(a) To empower the smallholding farmers established on the estates by conveying to them the land of which they had been in occupation.

(b) To introduce these farmers to modern agricultural practices and crop sustainability practices like irrigation.

(c) To encourage crop diversification crop rotation and to explore the production of fruits and other vegetables.

(d) To embrace animal husbandry and to appreciate synchronization of various agricultural practices.

(e) To have the farmers organised into a cooperative/association and to benefit from pooling their efforts and resources.

(f) To build the knowledge and capacity of the small farm holding and to encourage long term sustainability.

Claimant's treatment of the Lease

[34] In her lucid and comprehensive closing submissions learned lead Counsel for the defendant ("Government of St. Lucia") Solicitor General Mrs. V. Georgis Taylor Alexander pointed out that the claimant/company's evidence revealed that the claimant had always intended to buy the Estate (River Doree Holdings) even without Government's intervention and indeed actually attempted to do so from the original owner Mr. Eric Lawaetz who resided in St. Croix. This appears to have been the pattern elsewhere in Central and Latin America.

[35] The claimant eventually settled for a lease when it was realized that Government would not allow so large an estate to be transferred to an Alien with little or no accountability in its development. According to Mr. Soeren Hofdhal Manager of the Farm "Compton wanted to control development." The claimant however

contended that inasmuch as the company had paid the value of the land to Government by way of the leasehold rental which it had intended to pay had it been an outright purchase, it had at all times believed that notwithstanding the terms and conditions of the lease it was at liberty and had full authority to vary its obligations under the lease where the necessity arose. Furthermore the company and its legal representatives had collaborated with Government in the drawing up of the Lease and the formulation of the Development Programme and were expected to work hand in hand with each other in this regard. The claimant nevertheless acknowledged that ultimately the proceeds generated to pay for the land came from the sale of lands which in actual fact formed part of the Estate.

[36] The learned Solicitor General took the view that the claimant company had quite evidently placed too much emphasis on circumstances which it claimed surrounded the lease than on the actual terms of the lease itself. That I venture to say strikes at the heart of this case and in actual fact permeates the exchange of correspondence and dealings between the parties their legal representatives and Government officials including various ministers of Government following the request of the claimant company to exercise the option to purchase the remainder of the River Doree Lands conferred by Clause 9(9) of the lease agreement upon the expiration of the initial 10-year term on payment by the claimant/lessee of EC$10.00 to the defendant.

[37] As indicated at paragraphs 11 and 12 of the judgment the exercise of the option to purchase by the claimant under Clause 9(9) of the Lease Agreement was and is conditioned upon the Lessee having satisfactorily carried out the terms and conditions of the lease including the Development Programme and the defendant granting to the claimant a licence under the Alien's (Landholding Regulation) Laws which was to contain conditions designed to ensure that as far as practicable the Development Programme on pain of forfeiture of the said lands and buildings shall be carried out in accordance with the terms and conditions of the lease.

[38] It is therefore quite clear that the proper exercise of the option to purchase by the claimant company on expiration of the 10-year term was dependent upon:

(i) the satisfactory carrying out of the terms and conditions of the Lease including the Development Programme; and

(ii) the defendant granting to the claimant company a licence under the Alien's (Landholding Regulation) Laws which was to contain conditions designed to ensure that as far practicable the Development Programme on pain of forfeiture of the said lands and buildings shall be carried out in accordance with the terms and conditions of the lease.

[39] By letter dated 10th January 1997 addressed to Mr. Cosmos Richardson, Permanent Secretary in the Ministry of Agriculture Mr. Stephen Mc Namara acting on the instructions of River Doree Holdings Limited gave notice in accordance with Clause 9(9) of the Lease of his client's desire to purchase the absolute ownership of the lands and buildings which constituted the remainder of the property/estate then in its possession for a purchase price of EC$10.00 in accordance with the terms and conditions of the Lease pointing out that his client's right to purchase had become exercisable at the end of the 10th year of the Lease to wit on the 23rd day of October 1996.

[40] The said lands which would be conveyed by this sale Mr. Mc Namara pointed out were described in a schedule to the letter and application was also made for the grant made pursuant to Clause 9(11) of the Lease of an Alien's Licence to River Doree Holdings Limited in order to facilitate the transfer of the lands to the company.

The letter concluded thus:

> "We would like to receive at your earliest convenience confirmation that government intends to proceed with the sale in accordance with the terms of the Lease whereupon we would suggest that the parties and their Solicitors meet to discuss the composition of the Deed of Sale to ensure that the Deed conforms to the requirements of Clause 9(9)of the Lease."

[41] As indicated earlier in paragraphs 11 and 12 of the judgment Clause 9(9) of the Lease was evidently of paramount importance in the exercise by River Doree Holdings Limited of the option to purchase the remainder of the leasehold lands and buildings in its possession at the end of the initial 10-year period of the Lease.

[42] It is therefore not surprising that whether by design or coincidence Cabinet by letter dated 3rd May 1995 wrote to Mr. Soeren Hofdhal, Manager, Director and Shareholder of River Doree Holdings Limited informing him that the Cabinet of Ministers had directed the Ministry of Agriculture and the Ministry responsible for Social Services to undertake a joint study on the Economic and Social Impact of River Doree Holdings on the surrounding communities headed by Ms. Rufina Jean-Paul Chief Agricultural Planning Officer of the Ministry of Agriculture and soliciting his fullest cooperation in facilitating the team in carrying out its mandate. A copy of the investigative team's terms of reference was attached to the letter. Broadly speaking these aimed at a comparison of the existing crop acreages with that which obtained at the time of acquisition. As indicated earlier the 10th year of The River Doree Lease was due and in fact expired on the 23rd day of October 1996. At the foot of the terms of reference it stated that the Report should be submitted three months after the date of commencement.

[43] Writing again on 21st August 1995 to Mr. Hofdhal Mr. Richardson stated that **the review team had completed preliminary investigations and research of relevant documentation and was now in the process of discovering information that would facilitate the indepth analysis of the operation of River Doree Holdings over the last nine years. The exercise it was said was being carried out with a view to enabling a fuller understanding and appreciation of the impact of such a venture and to guide the process of decision making in respect of future ventures of this nature.** Information was requested on an attached listing to be forwarded by Mr. Hofdhal at the earliest opportunity. As part of the review process the team needed to be taken on a tour on 28th August 1995 of the River Doree Holdings as well Mr. Hofdhal was told. (Emphasis supplied).

[44] There appears to have been no response by Government to River Doree Holdings' notice of intention to purchase dated 10th January 1997. On 24th February 1997 Mr. Richardson informed Mr. Stephen McNamara that "the Ministry was presently (sic) studying the matter in order that it may be in a position to make an informed response." He promised to communicate with him as soon as the report had been completed. Writing on 19th June 1997 Mr. McNamara sought an update on the current position as five months had elapsed since the application to Government and a response was still awaited.

[45] On 25th July 1997 a letter was directed to the Honourable Attorney General for a status report as the matter was now said to be before him for processing. On 11th December 1997 Mr. Hofdhal and Mr. McNamara eventually met with Honourable Cas Elias the then Minister of Agriculture who related his efforts to fast track the deliberations of the Government appointed Review Committee (appointed in May 1995) and promised a response to the company's application to exercise its option to purchase the River Doree lands in the new year. Meanwhile Mr. Hofdhal himself undertook to formalize the report of the company's own endeavours over the last ten years and submit it to the Ministry of Agriculture.

[46] Interestingly in the foreword of that report prepared by River Doree Holdings Limited in 1997 captioned "Agricultural Production at Mont Lezard Estates 1986-1997" Prime Minister Sir John Compton wrote:

> "In the 1980's, the Government of Saint Lucia agreed to a proposal by a group known locally as "the Danes" to develop the Estates partly for agriculture and partly for housing. In order to ensure that the development plan was carried out the Government decided to hold the ownership and to lease the property to the group and to transfer title after ten years if satisfied that the development plans were realized. Since their involvement in the development of the estates, not only has decline in the estates been arrested, but a complete transformation has taken place. Modern technology such as irrigation had been introduced and new crops for both exports and the local market have been developed, providing a thrust in Government's plans for agricultural diversification.
> The existing crop of bananas has been rehabilitated and the yield dramatically improved. On the social side, the villagers and settlements under the economic influence of the estate have also been beneficially

affected, lands have been developed and sold for housing and many informal occupiers (squatters) have been given security of tenure.

In brief, an area which for over twenty years was in economic decline, has been given a new lease of life and agriculture in the area has been given a substantial boost. This is a most welcome change."

[47] Mont Lezard Estates is in fact the Holding Company of River Doree Holdings Limited and the report consisting of 11 chapters and 122 pages is I hasten to add exhibited (SH11) to the witness statement of the main claimant witness Soeren Hofdhal, Farm Manager, Director and Shareholder of River Doree Holdings Limited from its very inception.

[48] Prior to 1986 Mr. Hofdhal had worked for a Danish Foundation Faelleseje which had an interest in Agricultural Development in St. Lucia and Sir John the then Prime Minister of the United Workers Party Government had recommended River Doree as being most suitable for development. Faelleseje got notice that it was up for sale and that the owners were interested to sell. Mr. Hofdhal and another person from the Foundation initiated negotiations and worked on a programme. A price was negotiated with the owner Mr. Eric Lawaetz who lived in St. Croix.

[49] A meeting was set up with Sir John and initially outright purchase of the property was offered but Sir John wanted to control development Mr. Hofdhal declared adding that by letter of 24th June 1986 to their lawyers Messrs. McNamara & Co. the Honourable Prime Minister wrote as follows:

> *"<u>Re: The Danes – Alien Landholding Licence</u>*
> *Cabinet considered the application of your clients to purchase from Mr. Eric Lawaetz certain estates in the Quarter of Choiseul and agreed that because of the unfortunate experience with the present owners, the estates should not again be placed in the hands of aliens.*
>
> *Cabinet however agreed that Government will purchase the estates from Mr. Laweatz and lease them to your clients for a period of fifty years, provided your clients pay the cost of the acquisition with an option for renewal for a further 25 years should all obligations under the lease be satisfactorily discharged by your clients.*

If however your clients carry out an agreed development programme, your clients will after a period of ten years be permitted to exercise the option to purchase the said estates, or such part thereof as mutually agreed, for the sum of $10.00 and your clients will be granted an Aliens' Landholding Licence for this purpose."

This present transaction will be treated as a lease and will attract a licence fee of 5%.
Government is in the process of reviewing the incentives to be granted to agricultural enterprises and benefits of such review will be extended to your clients."

Yours faithfully

(Signed) John G.M Compton, Prime Minister

[50] So that it is patently clear that from the very outset it always was Government's intention that the option to purchase the leasehold lands (and buildings) by the claimant company was always subject to the company (i.e. the claimant) carrying out an agreed development programme. That is the bedrock on which the negotiations proceeded and always rested.

[51] Protracted correspondence between the parties spanning over eight years in which River Doree pressed the defendant to execute a Deed of Sale in respect of the remaining lands (subject of the lease) in favour of the company having failed altogether the claimant's Attorneys (Messrs McNamara & Co.) finally gave Notice of Intention in writing dated the 14th day of June 2005 to the Government of St. Lucia through the Attorney General to commence legal proceedings and file suit against the Government for breach of the lease agreement by failure to execute a Deed of Sale for the remaining lands and buildings subject to the said lease in compliance with a term providing therefor, and also to issue the relevant Alien's Licence allowing River Doree Holdings Limited to hold the said land and buildings as owner.

[52] Pursuant to Section 4 of the Land Acquisition Ordinance Chapter 109 Government by Notice published in the Government Gazette dated the 21st day of July 2005 issued notice that the leasehold interest of River Doree Holdings Limited in the

remaining portions of land leased to the company by Government were likely to be acquired for a public purpose, to wit: Land Reform, Housing and Agricultural Development, Land Conservation and Tourism Development. Horns were now well and truly locked and the current suit was duly launched by the claimant by claim form filed 2nd August 2005.

Interim Report of Committee forwarded to River Doree (RDH)

[53] Under cover of a letter dated 21st June 1999, Mr. James Fletcher the then Permanent Secretary of the Ministry of Agriculture forwarded an undated and unsigned Interim Report of the Committee which had been commissioned by Government (since May 1995) to review the operations of River Doree Holdings Ltd. and invited Mr. Hofdhal's comments to be submitted in writing by 16th July 1999. The opening paragraph of the Interim Report stated that the task given to the Committee was to conduct an enquiry into whether the terms of the (lease) agreement with the Government of St. Lucia were satisfactorily carried out by River Doree Holdings Ltd.

The report further stated that in executing its task the Committee had examined the following documents:

1. The lease agreement between River Doree Holdings Ltd. and the Government of St. Lucia which was registered on 18th March 1987 (140a No. 157198).
2. Studies and reports done by previous (unspecified) committees which were set up to look into the operations of River Doree Holdings Ltd. More specifically, the reports which dealt with the Financial and Economic Analysis of River Doree Holdings Ltd. and Mont Lezard Fruit Compnay Limited 1987 – 1994; River Doree Holdings: Social and Economic Review 1996.
3. Agricultural Production at Mt. Lezard 1986-1997; (a document submitted by River Doree Holdings Ltd.)

4. The report of a field visit led by Christopher Augier in October, 1998 to examine some specific concerns raised by members of the Campbell Committee. (Emphasis supplied).

[54] None of the documents which allegedly formed the background of the Interim Report were sent with it to Mr. Hofdhal. They followed on 16th July 1999 with the Final Report whereupon Mr. Fletcher stated that "because that report is very similar to the preliminary (sic) report forwarded to you earlier, it would be best if your response could be restricted to the final report ... ... which may contain additional items." Time for responding to the final report was set as 13th August 1999. The copy of the Final Report was curiously also undated and unsigned.

[55] In its introductory remarks the Committee in its Final Report declared that its specific task was to determine whether River Doree Holdings Ltd. had complied with the Development Programme and the terms of the Lease incidental thereto and listed the documents which it had examined in the process.

[56] In examining the performance of River Doree Holdings Ltd. with regard to the Development Programme the Review Committee stated that it had found that:

Re Sale of Land

River Doree did not follow the conditions of the lease to form a Selection Board comprising the Chief Agricultural Officer (now Director of Agricultural Services) and a representative from River Doree to sell 250 acres of farm lands and 50 acres of house lots. The evidence however shows that whilst River Doree did in fact sell more farmlands than the lease had stipulated, approval of all Deeds of Sale by the Attorney General and the signature of the Governor General on the Deeds of Sale effectively meant that Government had full knowledge of and had acquiesced in such sales of land and would accordingly be estopped from complaining of a breach of the lease in that regard to which it was itself privy and had in actual fact encouraged. It appears also that at some stage the parties had mutually agreed that because of the slow rate of sales there was no necessity for

a Selection Board. Furthermore the previous Prime Minister Sir John Compton had expressed interest in offering more land for sale than was stipulated in the Lease so River Doree had made more land available for sale as an act of cooperation and because the land in question was typically placed on the outskirts of the main production area.

Road Construction and Infrastructure Maintenance

[57] It is acknowledged that roads had been constructed to provide access to farmers' holdings and most of them were well maintained by River Doree but the Morne Agouti road and the road to the dam it was said were not well maintained. Evidence however shows that that particular location had suffered serious landslides. In the housing areas the Committee noted that the roads were poorly maintained and that footpaths were generally maintained by the tenants themselves. The general impression however is that once the roads in the housing areas had been constructed the tenants/occupants were responsible for their maintenance as well as the upkeep of the footpaths. It is conceded that whilst additional buildings had been constructed and insured e.g. pack houses for export crops their change in production focus had left the commodity specific buildings in disrepair e.g. the copra kiln and the cocoa dryer.

Farmers' Organisation

[58] The Committee's investigations revealed that the social cohesiveness between River Doree and the farmers in the area seemed to have been lacking and frustrated the emergence of cooperative ventures. As the lease itself stated "a Farmers' Organisation would be formed based on **voluntary participation to work for the common interest of the farmers' development**. The general feeling in this regard is that efforts failed largely on account of widespread distrust of "the aliens" amongst the locals who viewed "the Danes" as competitors whose main aim/interest was to acquire as much of "their lands" as they could. In short they felt disadvantaged and were blind to the benefits which an association could bring them. The effort understandably was a daunting task and little blame can be

attributed to River Doree in that regard. Having said that one notes from the response by River Doree to issues raised in the Final Report of the Committee that some 40 farmers had contracts in the production and sale of hot peppers and that the numbers were continuously increasing. By the year 2002, 100 farmers were in fact said to be involved and it had grown to be the most important export crop which was being rotated with sweet potatoes, cassava and pineapples. (Emphasis supplied.)

Production Programme – Core Farm

[59] The aim was to create a core farm of 800 acres and a production schedule was drawn up for that purpose. For example an average of 13 tons of bananas per acre was targeted. Reviewing the 1986-1987 figures the Committee found that the production targets were generally not met and that contrary to the Lease Agreement the cocoa and coffee responsibility was reneged by River Doree thus compromising crop diversity.

[60] In its Response (SH67) River Doree pointed out that whilst the programme aimed at cultivating 820 acres this was not possible as the highest possible area actually available for agricultural purposes turned out to be 465 acres of which 265 acres were suitable for intensive cultivation and 200 acres of anticipated arable land was simply not there which the previous Government was informed of in 1989. Further, some 183 acres more farm and house lots had been sold than was stipulated in the Lease. The available 465 acres were said to have been used as follows:

Bananas	100 acres
Pineapples	100 acres
Hot pepper and herbs	50 acres
Vegetables and 2.400 m^2 greenhouse	3 acres
Fishponds	2 acres
Coconuts	100 acres
Mahogany	50 acres
Mango	50 acres

Buildings	10 acres
	465 acres

This response River Doree states demonstrated a diversified production for the export market as well as for the domestic market. Modern production methods were said to have been used.

[61] The actual average performance of bananas was put at 9.6 tons per acre with a maximum of 18.6 tons/acre and a minimum of 6.5 tons/acre depending on the quality of the soil. The average figure calculated by the Committee according to River Doree was on the basis that roads ravines floodbeds etc were included in the amount of acres. In order to reach a comparable objective figure one had to calculate it using only the net acres River Doree declared.

Animal Husbandry and Compost

[62] According to River Doree some EC$176, 000 was invested during 1989 and 1990 in the piggery and compost production and produced 4 tons of compost per day but at the time there was no market in St. Lucia for production of pigs on a large scale. The project was therefore curtailed as it proved unprofitable. This is a clear example of the vagaries which can impact on the local market.

Irrigation

[63] River Doree in its Response to the Committee's Report asserted that there was no obligation on its part to establish and provide irrigation for smallholders free of cost. According to the lease small farmers could apply <u>to be connected to the irrigation system</u> whilst River Doree's responsibility was to ensure adequate water supply and to maintain the system once it was established. No one was ever denied access to the existing system. (Emphasis supplied)

[64] By and large both the Interim and Final Committee Reports which followed closely on each other in June/July 1999 were highly critical and generally condemnatory of River Doree's efforts to achieve the objectives of the Development Programme

on which the Lease Agreement was formulated. The concept was that of a modern highly productive farm in which diversity was present, technologies were environmentally friendly and where the use of compost, cooperation and collaboration among farms and farmers prevailed; employment opportunities were generated and above all a farm which was profitable and sustainable.

[65] From information received it did not appear to the Committee that River Doree met the criteria of a modern highly productive farm – what the Committee said it saw was a large farm with a wide variety of commodities with very high capital investment and very low output. This was firmly refuted by Mr. Hofdhal who pointed out that the objectives of the Development Plan were not terms which were to be followed strictly to the letter since they were "visions" or "goals" which it was hoped would be achieved. Further there was no requirement that River Doree should achieve definite economic results. And whilst the lease did not specify the engagement of any number of employees given the fact that the arable land was only 57% of the projected area, River Doree felt comfortable that the workforce had in actual fact risen from 15 to 70 – a commendable achievement in the circumstances. That is undeniably acceptable one would think. The Development Programme had consequently been adjusted from time to time Mr. Hofdhal pointed out in light of the fact that the creators of it realized that such an ambitious agricultural Development Programme had to be open to modification. Hence the expression "Development Programme" in the Lease Agreement is defined as "the programme set out in Schedule 6 as modified by this Lease and as updated from time to time by the Government and the Lessee."

[66] The Committee noted very little investment in human capital and saw no evidence of capacity building among smallholders of the area to benefit from the highly modern and productive farm. Furthermore the obligation to provide irrigation services to smallholders it was said had never been fulfilled. This was also refuted in paragraph 63 and as regards "investment in human capital" and "capacity building" River Doree in connection with promotion of new export products had in fact advised and instructed in the production of new products. And this was made

available to the whole farming community. In that way River Doree had contributed to the introduction of new modern farming methods incorporating the best traditional methods to the entire farming community and not only the River Doree Farms.

[67] In sum it was the overall conclusion of the Committee that although River Doree did not follow the lease agreement with regard to sale of lands the Government did acquiesce with what it did. That fact is not disputed. Nevertheless the Committee concluded that the evidence presented to it clearly showed that the Development Programme as outlined in the Lease Agreement between Government and River Doree was not satisfactorily carried out.

[68] In conclusion River Doree explained that there was no mention of any ratio between domestic food production and export production. River Doree had kept a balance between export production on the one hand and production for the local market on the other with the underlying purpose of producing for export and encourage more export development opportunities for both River Doree Holdings and the whole farming community. This was reflected in the export of hot peppers, herbs, sweet potatoes, pineapples, mangoes and bananas but there has been a substantial quantity produced for the local market which has reduced the import of fruits and vegetables thus contributing to the national diversification effort.

Report of Committee to look into operations of River Doree Holdings Limited as to whether the terms of the agreement with the Government of St. Lucia were satisfactorily carried out by River Doree Holdings Ltd.

[69] It will doubtless be recalled that the Committee which was commissioned by Cabinet in May 1995 to conduct a study on the Economic and Social Impact of River Doree Holdings on the surrounding communities headed by Mrs. Rufina Jean-Paul, Chief Agricultural Planning Officer of the Ministry of Agriculture first submitted an interim report around 21st June 1999. The stated purpose of that exercise was to look into the operations of River Doree Holdings <u>and to determine whether the terms of a lease agreement with the Government of St. Lucia (GOSL)</u>

were satisfactorily carried out by River Doree Holdings Ltd. (RDH). (Emphasis supplied)

[70] Close on the heels of the interim report the Final Report followed under cover of a letter from James Fletcher the then Permanent Secretary of the Ministry of Agriculture dated 16th July 1999 the ostensible purpose of which as stated in its introduction was to inquire into whether River Doree Holdings Ltd. had complied with Clause 9(9) of the Lease Agreement (set out at paragraph 7) between River Doree Holdings Ltd. and the Government of St. Lucia. More specifically the task of the Committee was to determine whether River Doree Holdings Ltd. had complied with the development programme and the terms of the Lease incidental thereto. No fewer than five annexes were attached to that report. (Emphasis supplied)

[71] By letter dated 30th September 1999, Soeren Hofdhal, Manager of RDH wrote to Cassius Elias, Minister of Agriculture concerning the notification of 10th January 1997 by RDH to GOSL of its desire to purchase the absolute ownership of Mt. Lezard Estate (the Holding Company of RDH).

[72] RDH's right to do so the letter stated was based on a lease contract dated 20th February 1987 between GOSL and RDH for "a portion of land 1,337 acres in the Quarter of Choiseul and Laborie for a term of fifty years" which was owned by Government and Clause 9(9) of which provided that "at any time after the end of the tenth year of the term hereby created and prior to the expiration of such term the Lessee (RDH) may give notice in writing to the Government of its desire to purchase the absolute ownership of the lands and buildings then subject to the Lease in a form to be settled by Lawyers for the Government and the Lessee so as to be consistent with the obligations of the Lessee in this Lease and to enable restrictions and positive obligations for the benefit of RDH to be imposed and enforced by the Government and the Lessee."

Clause 9(9) was very clear Mr. Hofdhal continued and it only subjected itself to sub-clauses (10), (11) and (12) of the Lease which stipulate the purchase price,

directions for the issuing of land holding licence and directions for payment of costs. River Doree Holdings had decided to exercise its option to purchase the said lands and buildings Mr. Hofdhal wrote since Clause 9(9) was granting that option unconditionally and RDH thereby called on GOSL to honour the contract of 20th February 1987.

[73] As stated in paragraphs 11 and 12 of this judgment Master Brian Cottle on a preliminary point raised by Mrs. Georgis Taylor-Alexander lead Counsel for the defendant, ruled on 27th October 2006 (and this Court has fully concurred) that the obligation to convey the property was dependent on the satisfactory execution of the Development Programme. Hence Mr. Hofdhal's view is in my opinion clearly misconceived and wholly erroneous. (Emphasis supplied)

[74] Undaunted and plainly "hedging his bet" Mr. Hofdhal went on in his letter to contend that in so far as Government would argue that in order to exercise its option to purchase the absolute ownership of the subject land in RDH it was obliged to comply with certain terms and conditions of the Lease, RDH had in that regard complied and in response to the report of the Committee had accordingly forwarded:

(a) A general response about how RDH had in fact fulfilled its obligations under the Lease as Lessee; and

(b) A specific response to the issues raised in the report.

[75] Tab 67 of the Court Record sets out River Doree's general responses to the Committee's Report followed by specific responses to specific issues raised in the Final Report in relation to the Development Programme. Much of this has in actual fact been addressed in paragraphs 56-68 and will be further elaborated on in the interest of clarification and completeness.

Payment of Lease Rent of US$1.4 million

[76] This was payable in annual instalments of US$182,146.86 plus a further 10% on the outstanding balance with the final instalment being due in October 1993. This

was for a 50-year lease renewable for a further 25 years and with an option to acquire proprietary ownership after 10 years and an alien's landholding licence subject to fulfilment of certain terms and conditions. It is the claimant's case that the Lease Rent was paid annually in the first years and the outstanding balance was paid in full in 1989 four years ahead of schedule, by means of a Barclays Bank PLC loan of US$900,000.00 using the leased property as collateral with the permission of the Prime MInister.

Use of the land for farming purposes only and in accordance with the Development Plan

[77] RDH maintains that the land had been used solely for agricultural purposes. On taking possession of the 1,337 acres of land the Lessee declared 5 acres were cultivated in coffee, 10 with cocoa and the remaining part was grown with coconuts or consisted of roads, ravines, nature reserves and house lots. Only 15 persons were then employed. No future development relating to coconuts was envisaged. Therefore new and modern crops were planned in the Development Programme and new diversified crops were introduced.

[78] The table at paragraph 60 shows how according to River Doree the land was utilized and how the arable land had been cultivated over the years. Mr. Hofdhal explains that some crops had been moved or changed due to material market conditions e.g. coffee and cocoa had been taken out of the programme because the initial area in 1987 was either in too bad shape or the variety could not be sold at a good price, so the production would not have been profitable. Further because of the reduced area the Lessee saw no reason to invest in these crops.

[79] Nevertheless, Mr.Hofdhal claimed that Mont Lezard estate was (at the time of writing in 1997) one of the biggest agricultural producers in St. Lucia and during the years had been one of the biggest exporters with 70 people permanently employed. And the introductory foreword (SH11) by the Right Honourable Sir John G.M. Compton to the Report entitled "Agricultural Production at Mont Lezard

Estate 1986 -1997" prepared by Mr. Soeren Hofdhal is a glowing testimony of the company's commendable performance over the initial 10-year term of the Lease.

Maintenance of buildings and infrastructure

[80] One of the terms of the lease agreement was for the Lessee to maintain roads and drains in such a condition and state of repair as was necessary for the Development Programme. Buildings were to be kept in good and substantial repair and insured. Roads were to be constructed through the area designated for smallholders. The Lessee explained that such undertaking was difficult and costly. However the main trunk roads were well maintained the Committee noted and some new buildings had been constructed e.g. pack houses for export crops. According to Management the buildings were insured.

[81] Mr. Hofdhal says that a reasonably good standard had been maintained during all the years and although it was not their obligation the Lessee had occasionally undertaken the repair of roads leading through the lots belonging to smallholders.

Sale of farm lots and house lots

[82] The Lease stipulated that 300 acres should be sold in 5 acre plots to local peasants and 10 acres as house lots and to offer to people already living on the land an opportunity to purchase a portion of land surrounding their houses. In the event Mr. Hofdhal disclosed that 432 acres had been sold as farm lots and 51 acres as house lots – clearly in excess of the stipulated figures – the reason being the express wish of the Prime Minister (Sir John) to make more land available to small farmers. River Doree had no objection inasmuch as the land in question was not in the area under production. See paragraph 56.

The establishment of an irrigation system

[83] Paragraph 63 of the judgment addresses this topic in part. According to the Lease the aim was to irrigate 350 acres of dry land at River Doree and Desgatier Estates which were under the control of the Lessee as defined in the Development Plan. The Lease Agreement however contained no provision as to how that irrigation

system would be established on the land belonging to small farmers and how it would be paid for. The Lease only made provision for the means by which the Lessee should provide for the free flow of water to small farmers who have been connected to the system, for maintenance of the system and how to calculate an irrigation charge to be paid by small farmers Mr. Hofdhal stated in his general response. Nor did the Lease Agreement give directions as to how farm holdings at a greater distance from the irrigation system should be connected he added.

[84] The reality of the matter he revealed was that out of 350 acres of land at River Doree and Desgatier Estates only 250 acres were/are suitable for production. The remaining 100 consisted of ravines floodbeds and roads. The areas designated for farm lots for small farmers have no direct connection to the irrigated area. Generally speaking therefore it was neither practical nor economical for them to be connected to the irrigation system.

The Development Programme

[85] The objectives of the Development Programme including River Doree's obligations and method of implementation are clearly set out in paragraphs 27-30.

It is Mr. Hofdhal's contention that the objectives were not as it were cast in stone but served "to clarify" the vision and plans of the Government and the Lessee which according to Clause 1 represented the "Leased Premises" covering 1,337 acres. The ostensible aim was to transform the whole area in order to achieve those objectives with each of the parties involved playing its part namely Government, the Lessee and the small farmers.

Sale of farm lots and formation of Farmers' Association

[86] Reasons for failure to form a cooperative amongst the small farmers have been addressed in paragraph 58. The effort largely relied on the voluntary participation of the farmers themselves with whom it proved difficult to arouse any interest or enthusiasm for reasons stated earlier. And whilst the farmers would generally work together they did not display any interest in forming an association as such.

The Production Programme

[87] This is without doubt perhaps the most significant feature/objective of the Leasehold Agreement.

Originally the programme stipulated in the Lease Agreement that 850 acres of land should be cultivated.

As we have seen at the time of preparing the Lease the land was not surveyed and as it turned out there were not 1,337 acres of Leased Premises but 200 acres less. Sir John (the then Prime Minister) was apprised of that fact/lacuna in the Lease which would inevitably have impacted negatively on the projected crop production. Besides that at the behest of Sir John himself over 183 acres more than was originally stipulated were sold as farm or house lots. It had always been the Government's desire to empower the people by land ownership.

These are the reasons Mr. Hofdhal explained why the core farm had 465 acres of arable land instead of 820 acres as stipulated in the Lease.

Adjustments to the Development Programme

[88] It was noted at paragraph 65 that having regard to the broad scope of the Development Programme modification from time to time would inevitably have been necessary and this is reflected in the definition of the expression as set out in Schedule 6 of the Lease Agreement between the parties.
Mr. Hofdhal in his general response to the Committee's observations in that regard acknowledged that modifications and adjustments of the Development Programme was an on-going process in an open and cooperative atmosphere.

Bananas

[89] By way of illustration Mr. Hofdhal wrote:

> "We invested heavily in bananas and in 1988 286 acres were planted with bananas, of which 200 acres were irrigated and a full program for applying fertilizer and chemicals using the company's experiences from other

countries. But some of the preconditions were not favourable. We planted bananas on different types of soil and landscape, but the harvest result on the poorer soil did not respond to the input. Combined with the big decrease in prices in the international market it was not economical to produce bananas in the area described in the Development Programme. Because of the changes in the banana market we had, as many other farmers in the banana growing countries, to readjust our production and take the loss. The changes in the market and the drop in prices forced us to reduce the acreage and only produce bananas on the best soil. The productivity has ranged from 18 tons/acre on the best soil to 6.5 tons per acre on the poorer soil."

Pineapples

[90] Here again the experience is instructive. This is what Mr. Hofdhal had to say:

> "A market research showed that it was feasible to export pineapples to UK and the first export took place. The fruits were handled and packed professionally and the buyer was satisfied with the quality. But the market in UK changed and the price received was not sufficient. We were not competitive with fruits from other countries with lower wages and lower freight prices.
> However a market in the region was found and in 1994 the acreage of pineapple reached 100 acres.
> Then the pineapples were hit by the white mealy bug. We managed to control the disease but the acreage was reduced to 50% and the yield per acre reduced too.
> We started to recuperate.
> In 1997 the pink mealy bug was found in St. Lucia and all exports to the neighbouring islands were stopped and all the fruit had to be sold on the local market at half price. This was the third blow to the pineapple production.
> After these diseases River Doree Holdings is the only farm with a major production of pineapple in St. Lucia."

[91] All of this serves to demonstrate the vagaries of the local and international export market with competition from larger producers lower labour costs and freight charges as well as pest infestation which warrant and justify modification as circumstances dictated. And whilst preferential tariffs in the UK and Europe afforded a measure of protection for banana exports for a while, the Lome Convention for example was due to expire in the year 2000 it was pointed out and quality bananas and quotas would have to be maintained in order to retain the existing market.

Pre-trial Memorandum of claimant

[92] In its pre-trial memorandum filed 5th November 2008 pursuant to Part 38.5 of the Civil Procedure Rules 2000 (CPR) the claimant River Doree Holdings Limited (RDH) essentially seeks a declaration that the company became entitled on 10th January 1997 to transfer of a portion of the River Doree lands then in its possession pursuant to an option to purchase contained in a Deed of Lease dated 20th February 1987 between the Government of St. Lucia and the company which was duly exercised.

[93] Government disputes the entitlement of the claimant to exercise the option on the ground that the claimant was in breach of certain terms and obligations on its part contained in the said Deed of Lease.

[94] River Doree (the claimant company) by way of reply and defence to counterclaim contends that there was substantial compliance with the terms and conditions of the Deed of Lease; that Government by and through its agents namely Ministers of Government and senior public servants was aware of the manner of execution of the terms of the lease by the claimant and had clearly acquiesced therewith, and that Government is therefore estopped from relying on the matters complained of only after exercise of the option to purchase - that is ex post facto.

[95] The claimant company further relies on the fact that at no time prior to the exercise of the option to purchase, albeit with Government's full knowledge of the claimant's operations and execution of the terms of the lease, did Government raise the issue of the alleged breaches.

[96] The claimant company further contends that any alleged breaches of the terms and conditions by RDH (which are however denied) were not the fault of RDH and/or were caused by the acts and/or omissions of Government.

[97] The claimant accordingly contends that its exercise of the option was valid and effectual in law and that Government now held the subject lands in trust for RDH.

Defendant's Pre-trial Memorandum

[98] In its pre-trial memorandum filed 10th November 2008 the defendant states that by Lease Agreement executed on 10th February 1987 the Crown and River Doree Holdings entered into a fifty year lease agreement for the lease of 1,337 acres using agricultural land.

[99] The claim of the claimant is that on 10th January 1997 it became entitled to have an option to purchase contained at clause 9(9) of the lease agreement executed between the Crown and River Doree Holdings Ltd. exercised in its favour.

[100] In defence Government contends that the option to purchase was contingent on the claimant satisfactorily executing a Development Programme contained in the lease agreement.

[101] The defendant maintains that:

1. The exercise of the option was contingent on the satisfactory execution of the Development Programme
2. The claimant failed to execute the Development Programme satisfactorily or at all

Notice by Government to acquire balance of Leased Premises

[102] By notice in the St. Lucia Government Gazette dated 21st July 2005, Government gave notice under the Land Acquisition Act of its intention to acquire the balance of the leasehold lands then remaining in the possession of RDH for a public purpose to wit: Land Reform, Housing and Agricultural Development etc. and contended that it was (in the circumstances) only obliged under the Act to pay compensation for the value of the leasehold acquired.

[103] Things had in actual fact come to a head two years earlier when by letter dated 16th June 2003 by Attorney General Petrus Compton to Ms. Tove H. Pederson, Director of River Doree Holdings Ltd. (Mr. Soeren Hofdfhal Manager of the Farm being apparently abroad at the time) informing her that the Attorney General's

Chambers was in receipt of a report compiled by a four member investigative team which had been commissioned by the Government of Saint Lucia to review and assess the allocation and utilization of the lands leased to River Doree Holdings Ltd and having perused the contents the Attorney General's Chambers was of the view that River Doree had failed to comply with Clause 8 and preamble B of the Lease Agreement between River Doree and the Government of St. Lucia in that the Development Programme outlined in the said lease had not been satisfactorily carried out by the company.

[104] The findings of the investigative team it was said were consistent with those of the Campbell review team which also reported in 1999 that River Doree Holdings had failed to comply satisfactorily with the terms and conditions of the lease regarding the Development Programme.

[105] In view of this the Government of St. Lucia in accordance with the provisions contained in Clause 9(1) of the said Lease Agreement gave notice of its intention to determine the said Lease as a consequence of the company's failure to comply with the obligations referred to in Clause 8 and preamble B of the Lease Agreement.

The letter was copied to Hon. Prime Minister – Minister of Finance, Hon. Calixte George – Minister of Agriculture.

Waiver raised by RDH

[106] In reply Mr. T.L Cozier of Messrs. McNamara & Co. by letter dated 8th July 2003 addressed to the Honourable Petrus Compton, Attorney General of St. Lucia acting on his client's instructions stated that River Doree had in its view substantially complied with the Development Obligations under the 1987 Lease. In so far as certain Development Obligations may not have been complied with, its client claims that the Government had been aware of such non-compliance and had either waived their rights as a matter of law or had accepted such non-compliance.

[107] A request was made to specify those obligations which had not been complied with as well as a copy of the report compiled by the four member investigative team adding that River Doree had fully complied with their rental obligations and Government had accepted full payment of rent notwithstanding as is alleged that there had been breach of covenant. It was River Doree's view that Government was not now entitled to invoke breach of covenant and that it would be acting unlawfully were it to pursue the remedies claimed.

Notice given by RDH to Government to purchase absolute ownership of land

[108] By letter dated 30th September 1999 Mr. Cozier continued River Doree gave notice in writing to purchase the absolute ownership of the land and buildings the subject of the Lease. The Government he added had wrongfully failed to give effect to their contractual obligations. River Doree would accordingly claim specific performance of the contract and/or damages for breach of contract he declared. The Honourable Attorney General was requested to confirm that Government would give effect to the said notice failing which River Doree would issue proceedings without further Notice for specific performance. In conclusion he pointed out that in so far as Government was able to satisfy a Court that it may lawfully terminate the Lease the provisions of Clause 9(6) of the Lease would apply. Any such compensation would be in addition to any claim for damages he further pointed out.

Legal action threatened by RDH

[109] Not surprisingly efforts to arrive at a mutually acceptable solution of the dispute or to make proposals to resolve the difficulties in a mutually acceptable manner failed altogether.

Writing on 20th December 2004 to the Honourable Kenny D. Anthony then Prime Minister of St. Lucia, Stephen McNamara after outlining the frustrations of no replies to letters no proposals or counter proposals forthcoming from the Government as well as a number of cancelled meetings stated that:

"It seems that regrettably our clients have no other alternative than to commence legal action to establish their legal rights. Without such action our clients are placed in a position of complete uncertainty over the future of their investment at River Doree".

[110] He finally requested:

1. Details of any alleged breach of covenant as requested on 20th June 2003.
2. Details of the Government Committee's counter proposals as promised on 19th May and 16th September 2004.
3. Details of any adjustments to the proposals contained in Mr. Hofdhal's letter dated 3rd December 2004.

[111] In his response dated December 29th 2004 the Honourable Prime Minister Kenny D. Anthony declared in paragraphs 2 and 3:

"I wish to make it abundantly clear that the Government of Saint Lucia has absolutely no objections to any decision by your clients to "commence legal action to establish their legal rights". Should that course of action be adopted, the Government of Saint Lucia will use every legal means available to it to protect the interest of the Government and the citizens of Saint Lucia.
The Government will not furnish your clients with any details of alleged breaches of covenant until such time that it is necessary to do so."

Legal proceedings commenced by Government

[112] By letter to Mr. Stephen McNamara dated 7th March 2005 Mr. Petrus Compton then Minister of External Affairs indicated that Cabinet was of the view that the company (RDH) either no longer wished to or no longer had the capacity to perform its obligations under the lease and that consequently Cabinet had agreed in the public interest to acquire the leasehold interest of the company in the remaining portions of the property being that part of the property not yet sold in accordance with the Lease. The relevant Government department he said had been instructed to commence proceedings under the Land Acquisition Ordinance Chapter 109.

That letter was copied to the Honourable Prime Minister, Honourable Attorney General and Cabinet Secretary and directed that any further correspondence in that regard should be directed to the Attorney General.

Notice by River Doree to file suit against Government

[113] Whereupon by letter dated 14th June 2005 Notice of River Doree's intention to commence legal proceedings and to file suit against the Government for breach of the Lease Agreement between Government and River Doree Holdings Limited dated 20th February 1987 was duly given by River Doree's solicitors.

The said breach the Notice alleged had arisen from the failure of Government to execute in favour of River Doree Holdings Limited, a Deed of Sale for the remaining lands and buildings subject to the said Lease in compliance with a term providing therefor, and also to issue the relevant Licence under the Alien's (Land Holding Regulation) Laws allowing River Doree Holdings Limited to hold the said land and buildings as owner.

[114] Despite several requests having been made to Government to transfer the absolute ownership of the said lands and buildings in compliance with the lease agreement, to date Government had failed to do so and was therefore in breach thereof.

River Doree Holdings Limited's claim was for a declaration that it is entitled to hold the said lands and buildings as absolute owner, and for damages and such other consequential relief to which it may be entitled.

Analysis and evaluation of the evidence

[115] Seven witnesses testified on behalf of the claimant including Mr. Francis S. Leonce an Agrobusiness Consultant who testified as an expert.

[116] Soeren Hofdhal was Manager of the claimant company River Doree Holdings Limited since its incorporation on 1st August 1986 as well as a Director and

Shareholder and his "dossier" entitled "Agricultural Production at Mt. Lezard Estate 1986-1987" is in my view a fairly balanced account of the progress which was achieved and setbacks encountered in the development of River Doree Holdings Limited in the initial ten years of its operations.

[117] By and large, Soeren Hofdhal the claimant's main witness impressed as a frank straightforward, truthful and knowledgeable witness within his field of competence and he withstood the searching scrutiny of lead Counsel for the defendant Government with remarkable candour. And there can be no denying that the introductory foreword by Sir John G.M. Compton the then Prime Minister of St. Lucia to his eleven chapter account of agricultural production at Mt. Lezard (the holding company of River Doree) from 1986-1997 clearly attests to the remarkable developmental progress which had been achieved within that era starting as it were in a sense virtually from scratch.

[118] Further in the final paragraph (at page 2) of the Executive Summary of the study of Francis Leonce BSc, MSc (Agriculture) (Toronto University) who had been commissioned by Mr. Soeren Hofdhal as an expert for the purpose of assessing the commercial, technological, social and developmental impact of a range of agricultural programmes and related activities carried out by the company within the framework of the land lease contract between River Doree Holdings Limited and the Government of St. Lucia had this to say:

> "The study revealed that while all the objectives of the Development Programme were not met to the extent expected partly due to unverified assumptions, River Doree Holdings did achieve critical benefits for agricultural diversification in St. Lucia".

[119] That in my view captures/encapsulates the essence of this case. The Development Programme called for implementation of division and sale of lands for agricultural holdings and house lots, formation of a farmers' association and for the remaining lands put at 800 acres to be developed as a core farm with a stipulated Production Programme.

[120] The Production Programme required 740 acres of the core farm to be cultivated with specified crops of which bananas and pineapples would be dominant and together occupying about 550 acres. The remaining lands would be cultivated with tree crops, coffee and cocoa and coconuts.

[121] Implementation of the Production Programme had to take into account the availability of arable lands to effectively accommodate the requirements of the stipulated crops and scope of production. This involved consideration of land capability for determining lands suitable for cultivation of crops and those which should be left undisturbed for conservation. As a result of these considerations, arable lands were reduced to 465 acres thus making it impossible to reach the production targets of the Production Programme.

[122] This is an example of the unverified assumptions on which the Development Programme was formulated which proved to be erroneous and frustrated River Doree from achieving the production targets set in the Development Programme. There were others Mr. Leonce went on to explain.

Development Programme – Land Utilization

[123] In Section III of his Development Assessment of Agricultural Activities of the River Doree Holdings in St. Lucia prepared in April 2005 at the request of Mr. Soeren Hofdhal, Mr. Francis Leonce states that the Development Programme in the Lease stipulated the amount of lands which were to be sold for farm holdings and house lots and that the remaining lands to be developed was estimated to provide 800 acres of arable land for the stipulated crop production programme of the core farm. This suggests that about 187 acres would be for non-agricultural use. By 1997 an additional 133 acres were sold for farm holdings and house lots and actual utilization for land sales was 483 acres vis à vis 350 acres stipulated in the Lease.

[124] According to Mr. Leonce the revised programme for land utilization in 1997 indicated that the maximum acreage of lands considered suitable for general cultivation was 465 acres; of this about 265 acres was arable lands suitable for

intensive cultivation. These were considerably less than the 800 acres of available arable lands estimated in the Development Programme. The great difference in arable lands was attributed to substantial amount of lands with cultivation constraints which had to be protected as river and ravine reserve lands. Additionally, some arable lands had to be used for infrastructure development and resettlement programmes which further reduced the acreage of lands which could be cultivated for crops.

[125] Arising from the foregoing Mr. Leonce declared that increased land sales, land use capability constraints, infrastructure development and resettlement needs were contributory elements to the decisions to adjust and update the Development Programme and land utilization by 1997. This change was consistent with the definition of the Development Programme in the Lease. Management he said explained that the Production Programme in the Lease had to be adjusted to suit the realities of implementation. The cropping programme was effectively commercial undertakings which did not have the benefit of Research and Development, sustained technical support and credit facility.

[126] The objectives of the Development Programme and the claimant's obligations thereunder and its implementation are outlined in paragraphs 27, 28, and 29 of the judgment. Crop Production cultivation follows in paragraph 30.

[127] A summary of crop production carried out in 1998 by Francis Leonce reveals that: 286 acres were cultivated with bananas. Initially over 160 acres of production was on soils which proved to be unsuitable for banana production. This applied in particular to River Doree lands. This led to acreage being reduced and maintained at 100 acres up to 1997. Banana cultivation had now been reduced to 4 acres of tissue culture plants at Parc. The current drastic reduction of banana production is attributed to unfavourable market price vis à vis labour costs as had been the general experience with production on large estates in St. Lucia.

Pineapples

This crop was grown at Bogalo (Descartiers) and River Doree estates. Coconut palms were uprooted to make way for crop on the lands of these estates. The gentle sloping topography was considered ideal for the crop but the shallow soils of River Doree affected the yield in the second year of the crop.

The main markets were Barbados, Antigua and to a lesser extent Trinidad and St. Vincent. Local sales were largely to hotels and private individuals who bought for retailing.

The pink mealy bug infestation in St. Lucia eventually led to export restrictions to the islands and the domestic market could not absorb the resultant surplus production. This led to a substantial loss of money which was not recovered in subsequent attempts to produce for the local market. Lack of funding became a key obstacle to the recovery of production. Pineapple production was subsequently discontinued.

Hot Peppers

[128] Maximum production acreage attained was 49 acres in 1997. Best yields were between 15,000 – 25,000 lbs. per acre. 10,000 lbs. per acre was considered breakeven point on the farm.

This crop is still in production at Bongalo (4 acres) and Parc (3 acres). Management plans to establish a total of 10 acres this year. Seedlings for 4 acres were already being grown in crushed coconut husks in small trays under plastic cover. The transplanted seedlings are grown on ridges under plastic cover and watered and fertilized through drip irrigation.

Through the hot pepper exporting programme River Doree Holdings was currently the largest exporter of non-traditional crops in St. Lucia. That development it was felt was more significant because it was a collaborative effort with many independent farmers and involved trials with new varieties and other technologies.

Melons

[129] Melons had recently been introduced in the cropping programme and was used as a rotation crop with hot peppers. Those were grown under plastic cover with drip fertilization as with hot peppers. Estimated acreage under cultivation was 4 acres on fields in Bongolo for the local market.

Root crops

[130] Root crops consisting of sweet potatoes, cassava and yams were rotated with hot peppers with current acreage estimated at 25 acres. In earlier years sweet potatoes and yams were exported to Canada and the UK but production has since fallen from 50 acres.

Tomatoes

[131] Tomatoes were the only glass house crop currently in production and are currently grown in three of nine greenhouses providing 2,400 sq. metres each of greenhouse space with a capacity to produce 46,800 lbs. annually. In the past they were grown directly from soil under plastic. Production ceased because of unfavourable prices. However marketing prospects have improved and plans to reestablish production in 30 litre bags using hydroponics technology to overcome disease were being pursued.

Coffee and Cocoa

[132] Coffee and cocoa were no longer in production. The estimated 15 acres of these two crops on flat arable lands were cut down to establish bananas when the latter were expected to provide better returns. Production and quality of beans of both crops were considered unsatisfactory for whatever market existed. Plans were to re-establish cocoa elsewhere to provide for better utilization of lands but the existing cocoa market price was not conducive to profitable production.

Coconuts

[133] The Development Programme estimated that there were 400 acres of pure-stand coconuts at the commencement of the River Doree Lease. These were progressively intercropped or cut down to free the arable lands for the cultivation of higher valuable crops such as bananas and pineapples. Inter-cropping resulted in increased copra production. Problems at the factory resulted in the discontinuation of copra production.

Mangoes

[134] Julie mangoes were being marketed in the UK grown on hilly land flanking the public road at Morne Lezard Estate which lands are categorized as suitable for tree crops and for extensive cultivation and which represented a 20 acre orchard of Julie. Another 10 acres were grown on slopes at River Doree and another 10 acres of Graham at River Doree and another 10 acres of Graham in the Parc Estate.

Mahogany

[135] Fifty acres were planted on sloping soils which were also classified as suitable for tree crops in Upper Lezard and at Parc. No mechanization is carried out on these slopes and the timber was extracted by chain saw.

Pig Farm and Compost Production

[136] As pig sale was erratic and revenue could not meet production cost the project was discontinued management explained. In fact it proved more economical to purchase pig and chicken manure from elsewhere to improve soil structure and fertility for vegetable programmes.

Fish Production

[137] Two former fish ponds which produced fish and shrimp in 1997 were now used for water storage management explained the enterprise having failed due to technical deficiencies.

Current Production Status

[138] The conclusions drawn from the developments outlined by Mr. Francis Leonce was that large expanses of arable lands now lay fallow in the core farm. It was estimated that no more than 25 percent of the cultivable land was currently under production. Management explained that this was directly attributable to the constraints to re-establish pineapple production or expand other crops due to unavailable credit for investment.

[139] Notably he added, accessing investment funding was inhibited by the existing impasse between River Doree and Government regarding River Doree's application to purchase the lands in fulfilment of lease obligations. Ownership of the lands had to be resolved to allow for appropriate collateral for investment credit.

The Hot Pepper with associated rotation crops were on-going he declared but these too required greater injection of funds for meaningful expansion and utilization of the lands.

Infrastructure – Buildings – Irrigation – Road Development

[140] All buildings appeared to be in reasonable condition viz the Manager's residence and the project's office attached to a packing house. The buildings and associated infrastructure occupied about 10 acres and the packing house was about 200 sq. metres and was equipped with conveyors, grading tables and an area for stacking boxes on pallets.

The conveyors and tables were adequately designed to facilitate the sequential operations of fruit grading, spraying and packing.

[141] Irrigation infrastructure was in place with pipes seen at River Doree and elsewhere. The system including two pumps was operational as irrigation was on-going at Bongolo. The main lines were in place at River Doree and Parc. There was only a need to attach laterals, drippers etc. for the system to be operational on

those estates. The drip system of irrigation with water generally applied under plastic cover seemed well laid out and effective. The aim of the programme was to irrigate 350 acres of land. About 50% of this target had been achieved Mr. Leonce estimated.

Farm Road Development

[142] Management claimed that they had invested very heavily in roads and irrigation systems in the beginning and cash inflows became a constraint to maintaining those activities. Farmers complained that the farm roads were not in an acceptable motorable condition. Management was however always prepared to rent out tractors and other implements for infrastructure work to any farmer who was interested in doing so.

Cross-examination of Mr. Francis Leonce

[143] Based on his wide experience and expertise Mr. Leonce in my view furnished the Court with a comprehensive erudite and helpful Development Assessment of agricultural activities at River Doree Holdings between 1987 and April 2005 which was commissioned by the Management of River Doree and most of the data of which he disclosed was provided by River Doree including crops grown on the estate on the various programmes that were in progress at the farm during the course of the initial ten years of the Lease. What he said he did was to interview officials – that is farmers and people associated with the development, farmers from elsewhere who marketed produce through River Doree Holdings Limited and persons whose official duties or business provided some degree of interaction with River Doree. They were the only persons with the raw data he pointed out. There were no other sources of data he added but he certainly checked information within the Ministry otherwise e.g. farmers etc.

[144] Questioned on what he meant by "unverified assumptions" in the final paragraph of his Executive Summary (see paragraph 118) Mr. Leonce explained that a very obvious one was the amount of arable land to do the kind of agricultural programmes particularly the specific ones outlined. He went on to explain that the

key part of this programme was working with small farmers together which was a two-sided affair. Experience had shown that when it was necessary (as here) to mobilise small farmers, you had to involve them early to know whether they are interested, so it seemed to him he revealed that there was some indication that that was taken for granted and it was an assumption. That was another example of an unverified assumption because he saw nothing to show that the farmers were consulted before and that they would be a part of the programme.

[145] Asked what percentage of the core farm he saw under active cultivation when he visited the core farm in 2004 he replied "I just have to qualitatively say, it would have been a low percentage because the big acreage things were pineapples and bananas which were no longer there and even the vegetables were on a decline ostensibly because of lack of funds inflow into the project." And this is echoed in paragraph 139 of the expert's testimony.

[146] When questioned on what crops he had observed in cultivation on his visits to the farm during the period 1995 to 1997 the witness replied pineapples, mangoes, some bananas and hot peppers. There were he said a variety of crops. Pineapples were most impressive by any standard that we had seen in these parts that is parts of the OECS and the Caribbean he emphasized short of Martinique. It was he added the dominant crop at the time. He was not at the time doing an investigation he clarified as he was "doing for Geest interest." And the pineapples at River Doree were very impressive.

[147] He did not see any signs of animal husbandry at the time and did not look for it. In fact he explained he was not looking for everything River Doree had. He was looking to see what they had that we (Geest) could be interested in. We got the impression that River Doree could have done something regionally in the instance which is not unusual, you do something domestic, regionally and as you get to the top level you face the metropole he said.

[148] With regard to the farmers' complaint of lack of water during the dry season Mr. Leonce did share the view that irrigation would have alleviated some of those

problems with production. Mr. Leonce pointed out that it was not a large portion of people who were canvassed but those he met seemed to be fairly representative and could articulate the position. He however took pains to explain that from his experience over the years, on merely seeing him they always thought an opportunity existed to ventilate their cause. This was something to be watched he said.

Re: Reduced Employment at River Doree Holdings

[149] Referring to numbers of persons employed at River Doree the witness testified that he did not try to determine this but it was very clear to him at the time that he conducted the study in 2004 it was considerably less than it had been in earlier times when he saw the project as a Geest Manager – part of the Geest Management. In the late nineties he said it would be qualitative and very subjective.

Marketing of Farmers' Produce

[150] It certainly was not his view that farmers were of the belief that the company did not play a useful role in organizing joint export marketing. On the contrary they had indicated that the company did and they could play an even more useful role but they were positive on that aspect. The view he clarified was that the company was playing a useful role mentioning hot pepper and a couple other things.

Formation of Farmers' Association

[151] Response from the farmers was that no initiative had been taken by either side towards that end. Farmers gave no indication of interest in forming such an association. Those were the responses from the farmers Mr. Leonce concluded.

The testimony of Mr. Julius Polius

[152] Julius Polius was from 1986-1988 Director of Research and Development in the Ministry of Agriculture and Consultant Agronomist of the National Development Corporation. He worked as a Scientist with CARDI from 1990 to 1995 and from

1996 to 2003 as Director of Agricultural Services and Permanent Secretary in the Ministry of Agriculture from 2003 to 2004.

[153] The first claimant witness testified that given his field of work he was familiar with River Doree Holdings Limited and that his greatest interaction with RDH was during his stint with CARDI. He knew the company to be the leader in the production of pineapples, sweet potatoes and mangoes in St. Lucia and set the pace in relation to the production of pineapples. He personally visited the farm many times voluntarily and when invited he disclosed.

[154] During his visits he found River Doree farm to be technologically advanced in agricultural practices. They had:

- The largest irrigation system on that side of the island;
- Irrigation technology existed at all levels. Water was used efficiently. Ponds were dug as water harvesting technique. They were also involved in the designing and installation of irrigation systems for farmers island wide.
- They were producing vegetables with modern green house technology;
- They employed large scale mechanization in ploughing and land preparation, at a time when there was not much mechanized ploughing employed on the island.

[155] He said that he was aware that River Doree had brought in one of the better varieties of pineapple. During his employment with CARDI a Tropical Produce Support Project was introduced to deal with fruit and vegetable production for export from the OECS. A team of technicians from Israel came to St. Lucia and the group had interacted with River Doree Holdings particularly in relation to mangoes and pineapples. They worked with and gave advice to River Doree Holdings he added. He was aware that RDH produced vegetables with the latest green house technology. They also grew hot peppers and had an outreach programme providing farmers with seedlings.

[156] In his witness statement dated 2nd June 2008 Julius Polius disclosed that RDH had invested in dasheen production and encouraged small farmers to grow the produce for export. Initially when RDH had taken possession of the farm there was friction he said with the community who resisted the company and resented their efforts to make room to grow crops e.g. by cutting down cocoa trees. The large farm owners he noted were not easily embraced. It was felt that RDH occupied lands which should have been occupied by small farmers.

[157] He had served with Mr. Hofdhal as a Director of the Bureau of Standards and felt that Mr. Hofdhal as a significant producer who dealt with a range of commodities that were relevant to the development of the agricultural sector at the time was eminently qualified for selection.

[158] He recalled that when Mr. Calixte George was Minister of Agriculture a Joan Norville report was produced on the activities of River Doree that was about June 2003. A visit was made to the farm which he had attended. Consideration he said was being given as to what to do with the farm. They toured the farm and consideration was being given to the relocation of persons and he sensed that taking over some part of the farm was also a consideration. Throughout his employment with Government from 1986 to 2003 he had always enjoyed a cordial and professional relationship with Mr. Hofdhal. He was aware that RDH had facilitated workshops on site involving farmers from different areas and specifically provided training to small farmers under their hot pepper programme.

[159] Throughout his many visits to the farm he concluded the posture of the company was one of professional approach to crop husbandry and he was aware that RDH used herbicides, carried out pest disease control, pruning and flower setting, flower induction and initiation, packaged produce, fertilizing and other practices depending on the crop.

Cross-examination of Mr. Julius Polius

[160] In crossexamination Mr. Polius confirmed that throughout his many visits to the farm the posture of the company was one of a professional approach to crop husbandry practices.

[161] He recalled being invited to and serving on an inquiry team engaged in the status of River Doree Holdings which Committee was appointed by Cabinet Conclusion 254 of 1997 and the other members of which comprised Dr. Dunstan Campbell as Chairperson, Ms. Rufina Paul and Ms. Dawn Lay-Moyston. The specific mandate of that Report he said was to conduct an enquiry into whether River Doree Holdings Limited had complied with Clause 9(9) of the Lease Agreement. He agreed that to have been part of that team he would have had to have been familiar with the Lease Agreement executed between River Doree Holdings and the Government of St. Lucia.

[162] When asked whether his conclusions on the Report were consistent with those of the other Committee members, he said no; whereupon the Solicitor General proceeded to read the conclusions set out at page 61 of the Report altogether and enquired whether the witness recalled them to be the conclusions of the Committee to which he replied no.

[163] I pause here to say that it seemed egregious and inappropriate to have put that question comprising some thirteen conclusions to the witness in that manner. After all he may well have recalled some and not others. When told that if he did not agree with those conclusions he would not have appended his signature to it (sic); he replied that he never had an opportunity to object to the conclusions.

[164] In answer to the Court he agreed that if he had dissented with them he could have said so but he did not have the opportunity to do so he explained as in preparation of the Report the Committee met just a few times but never met in a very consistent and diligent way and time was running out so the Chairman concluded

a Report wrote it up and it went around for signatures and he Julius Polius signed it.

[165] Elaborating further Mr. Polius stated that at the time that the document (i.e. the Report) came before him to sign, it was to be completed, they never really met as a group to finalize it. It came around to sign so he signed notwithstanding that he did not agree with the contents. The document was sent by round robin he disclosed concluding that even at that stage he could have indicated his dissent to its conclusions. So that his signature to the Report he recognized would without more have suggested his agreement with the contents. So why then did he not simply decline to sign it one is left to wonder.

[166] The attention of the witness was drawn to the documents which the members of the Committee had allegedly perused in coming to the conclusions. When asked whether he recalled those documents being reviewed by the Committee he replied no but added that he remembered the Lease Agreement – it was something the Committee had looked at initially but he could not recall the other reports. He did not recall being personally involved in reviewing or examining them.

[167] And whilst it may conceivably be true that he could not recall reviewing the documents (except perhaps the Lease Agreement) which the other members of the Committee had examined in executing their task it would seem more likely than not that he as well did examine them for he goes on to say that other members of the Committee would have looked at them and that he was sure maybe the Chairman did. Then why didn't he?

[168] Having disagreed with the conclusions of the Committee when the Report was circulated to him by round robin and then say that failure to then state his disagreement was an oversight on his part is to my mind incredible and indeed mind-boggling and is further aggravated by his acknowledgment that he did not think he had paid attention to them at the time and the Report needed to go through and he therefore signed and sent it through adding that he really didn't sit

with the Committee and agree on all of the items of conclusion simply because of the way they had operated.

[169] He denied that as a public servant he had been inefficient or that he was guilty of gross dereliction of duty but admitted that he may have compromised his integrity somewhat. In re-examination Mr. Polius sought to explain the method of operation of the Committee saying that the members came together as a Committee but that they never got down to doing the extent of work that needed to be done and there was always towards the end pressure for time and he thought a lot may have been left for the Chairman to do, and he (the witness) thought that he (the Chairman) proceeded and put the Report together based on what he had reviewed and drew up conclusions on that. At the end the extent of his (the witness') involvement in the work was not as deep as it ought to be (sic).

[170] As a result of this witness' vacillation and prevarication in cross-examination the value of his otherwise comprehensive well researched and impressive witness statement as borne out in examination-in-chief regarding the development programme of the core farm at River Doree between 1990 and 1997 is in my view diminished. He admitted that he did not pay enough attention to the details of the Dunstan Campbell Report and did not agree with its conclusions from a technical standpoint. Insufficient time and effort was spent by the Committee in preparation of the Report thus leaving it up to the Chairman who under mounting time constraints had virtually on his own put it together, formulated the conclusions and passed it to the members by round robin for signature. Hence his misgivings about the manner in which the entire exercise had been carried out. As a member of the Committee who had affixed his signature to the Report well knowing that he disagreed with its conclusions he frankly conceded that he would thereby have compromised his integrity a bit! His testimony was in my view otherwise on the whole useful and revealing. Regrettably the Court did not have the advantage of hearing Dr. Campbell the Chairman/presenter of the Report itself.

[171] Soeren Soerensen Director of Fairbank, Cooper and Lyle Ltd which owns the holding company of River Doree Ltd, i.e. Mont Lezard Estate Ltd said he came to St. Lucia in 1985 for approximately one year. As a trained farmer he had worked in Denmark and then went to St. Vincent about 1982 where he was involved in a Technical College training students from St. Vincent and elsewhere. He left St. Lucia in 1986 and whilst there he sought to develop an agricultural plan and went around the island to identify land.

[172] His witness statement dated 23rd May 2008 was brief. He said he met the then Prime Minister Sir John Compton on three occasions and two Government Ministers to discuss various aspects of an agricultural plan. Initially a dairy project was undertaken at Vieux Fort approved by Government for import substitution.

[173] Whilst looking for land he said River Doree was identified which turned out to be Government's main focus. Then owned by a Mr. Erik Lawaetz a purchase price was negotiated fixed solely on negotiations with him. According to the witness the "purchase price" later became termed a "basic rent" because the land was purchased by Government from the owner for a purchase price and was then leased at a basic rent which on payment over seven years would have been equivalent to the "purchase price" and that an option to purchase (the legal proprietary interest) after ten years from commencement of the lease merely required a nominal consideration of $10.00, an alien's licence to vest the freehold and notarial fees.

[174] It was not in their contemplation at the time of negotiation that their option to purchase would have been questioned or refused by Government the witness stated because they saw no difficulty satisfying any development plan.

[175] Part of the (Lease) Agreement the witness disclosed was for a development programme and as early as 1985 and 1986 "we had planned the type of programme we wanted". There was also dialogue on the need to sell land he revealed. He himself moved to Belize in 1986 he said but kept in touch with

Soeren Hofdhal the Managing Director of River Doree Holdings and visited occasionally.

[176] According to him:

> "I was involved in the development of farms in Ecuador and later in El Salvador, Venezuela and Grand Cayman.
>
> We had a common control system for all farms where we would share production data. We shared experiences and benefited from each Farm's (and country's) expertise, techniques and experiences.
>
> We established modern techniques and used modern equipment and ranked among the best in the market particularly in the field of bananas, hot peppers and pineapples.
>
> Due to the scale of our operation we were able to benefit in sharing information in the systems to be used e.g. irrigation.
>
> We met at least once a quarter in the region i.e. Fairbank, Cooper & Lyle Ltd together with its subsidiaries and discussed issues such as expansion and development of new systems, factors affecting the agricultural sector and marketing. The St. Lucia Manager, Mr. Hofdhal was present at these meetings."

[177] Paragraph 15 of the witness statement states:

> "At the time of the negotiations with Government there was good faith between the parties. There was an understanding that we would work with what we found. The spirit of the talks was that we would modify as and when necessary. Government at the time did not want speculation they wanted action. We discussed various options for development. We were never under the impression that there was a fixed practice. To my knowledge this manifested in what happened with the farm over the years, because of practical experiences, practices changed at the request of Government and also based on market conditions".

[178] When questioned in cross-examination as to whether the purchase price of the land was $10.00 because the basic rent had already been paid from the outset i.e. the option to purchase required only payment of a nominal consideration, he replied that was correct. When further questioned that it was not in their (River Doree's) contemplation at the time of negotiation that their option to purchase would be questioned or refused because they saw no difficulty satisfying any

development plan he elucidated that "development plan" in that context meant "to transform the River Doree area into a modern agricultural venture" adding that he could not recall that the expression "Development Programme" was defined (in the Lease).

[179] At paragraph 9 of his witness statement it was pointed out that he had stated that "we had planned the type of programme we wanted". By "we" was meant River Doree he agreed meaning Soeren Hofdhal and himself. And that was the programme which they had presented to Government he said and which he felt there was no difficulty in satisfying.

No re-examination understandably followed for it is plain that according to this witness that from the very outset RDH appears to have laboured under the delusion or misconception that the basic rental fee in respect of the lease which was equivalent to the agreed outright purchase price having been paid at the inception of the lease, the option to purchase the freehold merely required a nominal consideration of EC$10.00 and it was not in their contemplation at the time of the negotiation that their option to purchase would be questioned or refused because Mr. Hofdhal and himself saw no difficulty satisfying any development plan which of course was not the case. No more need be said on that score save to point out that from the very outset Clause 9(9) of the Lease stipulated that the exercise of the option to purchase was subject to the satisfactory performance of the Development Programme which was the bedrock of the Agreement and the specifics/imperatives of which were evidently not carefully heeded by RDH who (according to Mr. Soerensen) having paid the basic rental fee which was the equivalent of the outright purchase price of the lease no doubt felt that they had thereby acquired a "vested right" to the remainder of the River Doree lands which merely required fulfilment of the requisite legal formalities to achieve. Small wonder that RDH were colloquially speaking completely bowled over when Government refused to execute a Deed of Sale in their favour in respect of the remaining lands or to issue an Alien's Landholding licence therefor. Indeed Government eventually moved by letter dated 7th March 2005 to acquire in

the public interest the remaining portion of the leasehold which had not yet been sold in accordance with the Lease.

The evidence of Tove Huggard Pedersen

[180] Appointed Assistant Manager of River Doree Holdings (RDH) from November 1986 and Director on 14th December 1993 Tove Pedersen came to St. Lucia in 1986 and continued to reside there until sometime in 2004 when she moved to Mexico. As Assistant Manager of RDH she had specific responsibility she said for the accounts; budget and control of the finances. She also had responsibility for the sale of land and establishment of family programmes and pre-schools. At various periods she disclosed that she was responsible for various crops in the greenhouses and had responsibility for data collection and making of production reports and statistics according to her witness statement dated 23rd May 2008. She was also part of the Board of Directors of RDH and was aware of most business decisions. Not having been a member of the Board before December 1993 any information or decisions of the Board of which she claimed to be aware of prior thereto could not have been first hand and would consequently carry little or no weight as being hearsay.

[181] The witness stated that she was not involved in the negotiations of the Lease between RDH and the Government of St. Lucia which was executed on 20th February 1987 but was aware of its contents and requirements. The thrust of her evidence was that River Doree did not receive the required assistance from Government such as research and development as well as technical information, bearing in mind that by the terms of the lease agreement the project was a joint venture/enterprise with shared responsibility between the Government and River Doree Holdings.

[182] For example regarding the sale of farm lands Ms. Pedersen related how it took a long time for everything to be put in place before RDH could start selling land because of bureaucratic delays involving Government lawyers (the Attorney General's Chambers) concerning the contents of the Deeds of Sale for small

farmers and house spot purchasers. Expectations were that land would have been sold from as early as 1987 but sales did not materialize in actual fact before the early 1990's. Initially there were problems with delinquent purchasers which necessitated substantial down payments being demanded to ensure that buyers were bona fide.

[183] Problems also arose because all sales were subject to Government approval. That requirement with regard to sales of house lots was dispensed with in September 1989 the witness disclosed. Later it was agreed between Mr. Hofdhal and the Prime Minister that it was no longer necessary to approve every prospective farmer who applied to River Doree to purchase land. This process accelerated land sales Ms. Pedersen revealed until 1997 when with a change of Government sales of land were stopped except for sales in progress. New persons seeking to buy land in the area thenceforth had to go directly to the Prime Minister the witness further revealed.

[184] Regarding road infrastructure the witness testified that a road was constructed in the Mont Lezard area and maintained as well as in Guyabois and La Perle areas. RDH undertook the building of these roads she pointed out although there were no such obligations in the Lease. RDH she added had never been asked by Government to improve the road.

[185] Ms. Pedersen reviewed the Production Programme pertaining to bananas, coffee/cocoa and fruit trees and indicated that she had worked closely with Soeren Hofdhal the Manager of the farm. She endorsed the following documents namely:

- Agricultural Production at Mt. Lezard Estate 1986 – 1997 Exhibit TP13.
- Response to the Report of the Committee submitted under cover of a letter dated 30th September 1999 Exhibit TP14 including:-
- A General Response about how River Doree Holdings has fulfilled the obligations of the Lessee

- A Specific Response to the issues raised in the Report of the Committee.

[186] As a private company and having had responsibility for the Accounts and as a Director of the company, she was aware that the holding company required the River Doree Development Program to be a success and to become self sufficient. Government never complained she declared that they had not been performing as they (RDH) should under the Development Program. The Development Plan permitted modification from time to time. In fact they were in agreement to all modifications that were made. RDH were proactive in their approach to Government informing them of all new developments she said.

[187] In conclusion the witness declared that the uncertainty of River Doree's land tenure (from 1997) had resulted in its inability to obtain financing to further implement the Development Programme - a factor which the Court notes has been recognized and reiterated by other witnesses such as Mr. Hofdhal and the expert witness Mr. Francis Leonce.

[188] It is indeed disturbing that it took Government over six years to provide River Doree with a definitive and unequivocal response to its notice dated 10th January 1997 to exercise its option to purchase the remainder of the River Doree lands in accordance with Clause 9(9) of the Lease and this is compounded by the fact that in the interim the parties had seemingly been negotiating in the expectation of arriving at a mutually acceptable solution only for the claimant to be told by letter from the Attorney General dated 16th June 2003 addressed to Ms. Pedersen that the findings of a four member investigative team which were consistent with those of the later Dunstan Campbell review team had reported that River Doree Holdings had failed to comply satisfactorily with the terms and conditions of the Lease regarding the Development Programme and that in view of this the Government of Saint Lucia in accordance with the provisions contained in Clause 9(1) of the said Lease Agreement had given notice of its intention to determine the said Lease as

a consequence of River Doree's failure to comply with the obligations referred to in Clause 8 and preamble B of the Lease Agreement.

Cross-examination of Tove Hugard Pedersen

[189] In cross-examination Ms. Pedersen admitted that wherever representation was made in her witness statement to meetings before she became a director of River Doree Holdings (on 14th December 1993) she would not have had personal knowledge of those meetings. If the Prime Minister or other Government officials were visiting the farm she would have met them she clarified.

[190] When asked whether she recalled any letters or correspondence being issued by RDH to Government from 1993 requesting a change of the development programme she said she was aware of several such letters either first hand or not first hand as well as meetings but did not recall the dates off-hand.

[191] Referring to paragraph 11 of her witness statement she agreed that RDH had received technical assistance through international organizations for example CARDI and SLREP explaining that in most cases it was on their own initiative as RDH had to go to them and ask for specific things. In other cases RDH did many developments of many crops and exports on their own she added. I believe this.

[192] By the expression "to give all necessary assistance to permit the Lessee to satisfactorily execute the Development Plan" (in Schedule 4 paragraph 2 of the Lease) she envisaged this to mean duty free concessions when requested. In some cases she confirmed RDH did not get duty free concessions. Further pressed Ms. Pedersen admitted that RDH did receive some assistance from the Government of St. Lucia. When asked whether RDH was unhappy with the assistance provided the witness replied that RDH had to do a lot of their research and development on their own and that in many other countries farming businesses are being helped by the Government. The claimant's expert witness Mr. Francis Leonce confirmed this at page 10 paragraph 5 of Section III of his report.

Evidence of Mr. Matthias Joseph

[193] Matthias Joseph of River Doree told the Court that he was employed at RDH from 1986 first clearing the land for banana planting and then he moved to irrigation having been employed by Water and Sewerage Company in the Choiseul Pump Station. At River Doree Holdings he had been responsible for laying pipes, tubings and also the mounting of the pumps in the various fields. He was supervised by a Dane named Thomas Vaeth he said. The area in River Doree was separated into ten fields he explained with different persons handling the pumps tubings and sprinklers.

Over the years there were pineapple, melon, tobacco, sweet potato and bananas planted and there was also a pig farm and ponds for shrimps.

[194] Initially he said he saw Sir John Compton visit the farm as well as the Minister of Agriculture. When Government changed Cassius Elias visited on one occasion and so did Calixte George. Local schools visited the farm also he said. He would be notified of the names of local individuals who would come and collect pumps and tubes (which did not involve the farm).

Mr. Joseph claimed that he saw the farm grow and increase in production every year. When he began employment at RDH there were about 15 workers and the numbers increased to over 100 workers. At present (June 2008) there was only harvesting of bananas he said and the purchase of peppers for export. Breadfruit and dasheen were also bought for export. His evidence was credible and was reflected in the testimony of earlier witnesses.

He was not cross examined.

[195] The Court also heard from **Ms. Anne Hansen** who at the date of her witness statement on 22nd May 2008 was the current Chairman of Mont Lezard Estates Ltd the Holding Company of River Doree Holdings Limited and Fairbank, Cooper and Lyle Ltd which owns Mont Lezard Estate Ltd. She was also a Director of River Doree Holdings Ltd having been so appointed on 12th February 2006.

[196] She stated that Fairbank, Cooper & Lyle Ltd (FCL) is in fact the primary Holding Company of a group of companies which owns and runs companies in Latin America mainly. She had commenced to work for FCL she said in 1990 as a Consultant. From 1993 she became Managing Director and a Board member and received monthly reports on all of their companies over the years. She had attended meetings with the Ministers of Agriculture together with Mr. Soeren Hofdhal and also with Prime Minister Dr. Kenny Anthony.

[197] In January 2000 she recalled attending a visit to the farm headed by Cassius Elias Minister of Agriculture. She had been closely involved in how to develop the farm and the economic implications. She was aware she disclosed of most if not all Government meetings.

[198] To the best of her understanding FCL wanted to buy and invest in the property at River Doree as they had done in other countries. The discussions with the Lawaetz family were with a view to a normal land purchase. At that time it was their understanding that Sir John Compton wanted a foreign company to invest in St. Lucia and partake in the agricultural development in St. Lucia. At the same time he wanted to develop the small farmers. He did not want speculation he wanted to see development of agriculture in St. Lucia. We were very happy with that. They felt that they had common interests with the Government.

[199] As a privately owned commercial enterprise River Doree worked to produce a surplus and economic results whilst also developing production and creating permanent employment she said.

At the time of the negotiations it was their clear understanding that they could acquire land in St. Lucia by demonstrating to Government that they were serious.

1986 – 1996

[200] To her best knowledge of Government practice in the years 1986-1996 under Sir John Compton there was mutual understanding and reciprocity between the parties the witness stated adding that she had seen correspondence and was

aware of meetings and during the period 1986 to 1996 had formed the view that things were working out very well with the Government of St. Lucia. In agriculture Ms. Hansen continued several factors affect progress e.g. market conditions, rainfall, "local calamities" between growers and exporters, plant infestation e.g. pink mealy bug.

Government she continued was very practical in their approach and attitude and to her knowledge there was no dissatisfaction with the progress being made and during all the years they had never received anything in writing indicating that Government was dissatisfied with their efforts.

[201] There had been discussions on how to proceed e.g. in 1988 when a new Minister of Government took office he had a slightly different focus in agriculture. Until that time RDH had emphasized bananas and pineapples. The new Minister however wanted to diversify. There had always been discussions as to how to develop the production in the best way, but never disagreements she pointed out.

[202] She knew that over the years their (i.e. FCL's) Manager Mr. Soeren Hofdhal was asked to participate in meetings for privately owned companies that were experimenting and actively pursuing agricultural production. The Government used River Doree farm as a place to send foreign official guests. In good faith over the years they had worked with Government.

[203] Personally Ms. Hansen declared that she took it as a formality that RDH were to inform Government that they wanted to buy the land after ten (10) years. It came as a total surprise that Government did not reply at once and accept their offer to purchase. They were led to believe this would be the case and that was the spirit when they had signed the Lease Agreement. They had signed on the understanding that they had paid the 'purchase price for the land' and on exercising their option they would be granted the alien's licence to enable title to be transferred to them. It was of course subject to the cooperation of Government in achieving certain objectives she recognised.

[204] The Holding Company Mont Lezard Estate Ltd had entered the Lease Agreement she said because they wanted to develop agriculture in St. Lucia as they (FCL) had done in many other countries. Since they were a commercial entity she added they had to do things with economic meaning i.e. to create a surplus. It had been their policy to follow the Development Program because they thought it was reasonable and in actual fact it was their Manager (Mr. Soeren Hofdhal) and their company (RDH) who were the actual creators of the program in accordance with the Government. They wanted to cultivate products to reduce imports whilst also producing exports and bring in foreign capital she declared.

[205] Such a farm she further declared needed to be self-sustainable with the Holding Company providing initial outlay but FCL put pressure on the company to make sure it was performing. They had for all the companies run the policy that each company must be a good going concern.

[206] She remembered she said attending some of the meetings as late as October 1997 when Mr. Cassius Elias visited the farm and expressed that he was happy with what he saw. Also at a later meeting with the same Minister he again expressed satisfaction.

She further said that she was also at a meeting with the Prime Minister in 2001. It was a very friendly meeting. They discussed land sales and he mentioned those he wanted realized. He expressed that he was very happy with the pepper project. She added that modern agricultural practices were being used in St. Lucia in relation to growth of crops in line with current methods and practice.

Re: sale of land

[207] Ms. Hansen stated at paragraph 8 of her witness statement that she had followed this closely over the years **from a Holding Company point of view.** It was important that the land should be sold at the right price she stated and they considered that they had paid a real purchase price for the land. Sir John Compton and some of the Ministers were interested in selling more land than the

Lease had stipulated. Government was under pressure from small farmers to get land she added. The Lease required that there should be a Selection Committee set up by Government but this was never done. (Emphasis supplied).

[208] Government had always signed the Deeds of Sale which she said gave them comfort. When the Government changed in 1997, there had been examples of cases where the Manager Mr. Hofdhal would request sales for parties which Government would refuse. Dr. Kenny Anthony also had special wishes for special sales that he wanted to take place. In one meeting he was pre-occupied with a particular sale she recalled.

[209] Regarding financing of smallholders the witness explained that their understanding was that it had never been RDH's responsibility for organizing small holders and their financing and it was not their policy either to pay for irrigation. What they (RDH) would do is put the system in place to enable small farmers to be connected at a cost. The farmers needed to be organized to enable them to do it themselves she further explained adding that all those who were interested had been helped.

The Status of the Farm

[210] In paragraph 10 of her witness statement Anne Hansen wrote:

> "We were taken by surprise that Government did not immediately agree to hand over the property to us when we exercised our option to purchase. We approached Barclays Bank Plc after January 1997 to continue investment in other crops. They said no because we were not given the Alien's Licence to purchase the land. They felt the position was insecure. We also contacted other Banks including the Development Bank and they said the same. The Banks were not interested, the Holding Company got more uneasy and we did not want to invest any more money. At the time we approached the Bank we were a going concern and a good example of how to develop agricultural production. Since then progress has been stopped."

[211] In 2003 when the delegation expressed dissatisfaction with what it had seen it was as a result of their not being able to receive financing at that stage she disclosed. Also there had been no further Government involvement. There was very little

production taking place at River Doree then, which was a pity she lamented. Soeren Hofdhal had involved farmers in growing peppers for export. In order to run the place and because of their responsibility to the small farmers they were still producing and selling peppers for the export market. There were also mango trees which they continued to harvest for the United Kingdom.

[212] In her concluding paragraph Ms. Anne Hansen stated that:

> "It was in January 1997 that we sought to exercise our option to purchase and it was now eleven (11) years." That is to say 2008.

In her opinion Government had been very slow in reaching its decision which had negatively impacted on River Doree Holdings Limited. It had been increasingly difficult to establish dialogue with Government. She went on to say that:

> "Since nothing was happening they (the claimants) had tried to put legal pressure on the Government; they also sought advice from their United Kingdom lawyers. They had a meeting in October 1999 with Cassius Elias. They then had the delegation in January 2000 and we explained what we had been doing in good faith."
>
> "It was not until 2003 that Government finally wrote saying that they had the intention to terminate the Lease."
>
> "RDH still tried to reach a solution because we wanted to continue our Agricultural production, we wanted however to secure ownership as had always been the plan. We felt that we had fulfilled the Development Plan and with Government's endorsement and approval that we had become legally entitled to title to the Land and that we had been unfairly denied an Alien's Licence to enable us to purchase."

[213] Like Ms. Tove Huggard Pedersen, Ms. Anne Hansen made reference to information which she claimed was to the best of her knowledge but it was evidently **not within her personal knowledge or first hand** for example at paragraph 5 of her witness statement she declared:

> "To my knowledge of Government practice in the years 1986 – 1996 under Sir John Compton there was mutual understanding and reciprocity between the parties. She also said that she had seen correspondence and was aware of meetings and during the period 1986 - 1996 it was our view that things were working out very well with the Government of St. Lucia. Government was very practical in their approach and attitude and to my knowledge there was no dissatisfaction with the progress being

> made. During all the years we had never received anything in writing indicating that Government was dissatisfied with our efforts." (Emphasis supplied).

[214] When closely questioned by Mrs. Taylor-Alexander Ms. Hansen agreed that she was not a Director of River Doree Holdings prior to 2006 and that Fairbank Cooper and Lyle Ltd (FCL) was a shareholder of River Doree which would not have given her the right to participate in board meetings of River Doree Holdings or to participate in any decision making process of River Doree.

[215] On that basis the Court is satisfied that a number of Ms. Hansen's statements and assertions in paragraph 5 of her witness statement was not within her personal knowledge as she was not affiliated to River Doree at the time and insofar as they referred to the period 1986 – 1993 she would not have had personal knowledge of them and they would have been hearsay and so strictly speaking inadmissible in evidence as such.

[216] In like manner this would apply to the last subparagraph of paragraph 4 of Ms. Hansen's witness statement which states that:

> "The Development Plan or Programme was to be agreed upon between the parties. The contract was, therefore worded so as not to impose stringent obligations on River Doree Holdings Ltd. It was clear that the parties would work together and this was our understanding."

By "our understanding" Ms. Hansen explained that she meant their board meetings at Mont Lezard Estate and her knowledge through all the correspondence with the Ministry of Agriculture and the Prime Minister and "the correspondence" which she referred to is what was exhibited to the witness statement of Soeren Hofdhal and ought therefore to have been disclosed (but was not). The witness further revealed that when she referred to "our board meetings" it would be what was communicated to her for instance by Soeren Hofdhal of the board meetings including reports and correspondence.

[217] Clearly all of this relates to evidence of facts which were certainly not derived from the personal knowledge of the witness herself at first hand and would therefore be

hearsay and would strictly speaking be inadmissible in evidence. If the source or sources of the evidence are known then there ought to have been full disclosure of them which the witness admitted in cross-examination had not been done.

The Defence

[218] The defendant's defence is essentially the claimant's alleged failure to comply with the terms and conditions of the Lease Agreement and more specifically its failure to satisfactorily carry out the obligations stipulated in the Development Programme of the Agreement as outlined in paragraphs 27 to 31 inclusive of the judgment.

[219] Government's vision as revealed by the witness statement and testimony of **Dunley Auguste** the then Deputy Permanent Secretary in the Ministry of Agriculture was for use and rationalization of the lands of the Estate Holdings as set out in paragraph 33. Out of an estimated 1337 acres of land comprising the River Doree Holdings (RDH) 820 acres were targeted for full time production by the end of 1991 while 300 acres were to be allocated to small farmers.

[220] Notably the claimant (Mr. Hofdhal) admitted at trial that it had instructed its attorneys (Messrs. McNamara and Co.) to draft the Lease Agreement and had identified the deliverables expected after a thorough assessment of the estate by their experts of the soil type and topography in order to determine its commercial and agricultural suitability.

[221] It will be recalled that in a nutshell the claimant's claim is for a declaration that it is entitled on the expiration of 10 years from 24th October 1986 to have the title to the subject lands then in its possession conveyed to it in accordance with the terms and conditions of the Lease Agreement dated 20th February 1987 having discharged its obligations either wholly or substantially thereunder and validly exercised its option to purchase same in keeping with Clause 9(9) of the said Agreement by giving notice in writing of its intention to so do by letter dated 10th January 1997 to the defendant.

[222] The claim is opposed on the basis that the claimant failed to discharge its obligations satisfactorily more specifically those set out in Clause 9(11) of the Lease Agreement relating to the granting to it of an Alien's Landholding Licence containing conditions designed to ensure that as far as practicable the Development Programme on pain of forfeiture of the said lands and buildings shall be carried out in accordance with the terms and conditions of the Lease. The claim is further opposed by particulars set out in paragraph 15 of the defence and outlined in paragraph 16 herein. By way of counterclaim the defendant contends that it had devised a specific development plan for the area and had acquired and leased it to the claimant with the specific aim of executing same but in breach of its obligations it had failed adequately or at all to do so more especially to explore crop and agricultural methods to revolutionize the agricultural sector as envisaged thus obliging the defendant in the public interest to acquire the remaining portions of the land leased to the claimant for a public purpose namely Land Reform, Housing and Agricultural Development as well as Conservation and Tourism.

Review and Analysis of Evidence of Defence Witnesses

[223] **Joan John-Norville** a retired civil servant who prior to her retirement in August 2007 was employed with the Ministry of Agriculture as Deputy Director of Agricultural Services from 2002 – 2007 was the first of four defence witnesses. She said that she had been employed by the Government of St. Lucia from 1983 for 24 years and held the post of Acting Director of Agricultural Services on her retirement in 2007.

[224] Senior Counsel of Trinidad and Tobago Stanley Marcus in his written submissions stated that her evidence was not helpful in that it had no probative value the main reasons being that although her witness statement gave the impression that she was speaking of matters within her own personal knowledge cross-examination showed that she was in actual fact relying on information obtained from other sources whether oral or in writing which was not therefore first hand.

[225] For example she stated that she became conversant with the terms and conditions of the Lease Agreement in 1997 – that is at the end of the initial ten year period of the lease and at a time when the claimant had already indicated to Government its desire to exercise the option to purchase the remaining River Doree lands. She would obviously therefore not have been in a position then to have monitored during that ten year period the quality of performance of the operations of River Doree Holdings and to determine whether or not there had been satisfactory compliance with the terms and conditions of the Lease Agreement generally and more specifically the Development Programme stipulated therein. That is of course quite obvious.

[226] In cross-examination the witness disclosed that **she had during the period 1987-1997 worked as an Agronomist in the Research and Development Division of the Ministry of Agriculture with duties of a general nature** and not therefore investigative as when she was appointed a member of a four person **review team** with a specific mandate to review the allocation and utilization of the River Doree lands. She was not a member of the committee appointed by Cabinet in May 1998 and got the committee's terms of reference from the committee's report, namely the Dunstan Campbell Report. The conclusion stated at paragraph 7 of her witness statement was plainly derived from the Dunstan Campbell Report. Government's conclusion (as set out in paragraph 8 of her witness statement) that there was sufficient evidence that the claimant did not adhere to the terms and conditions of the Lease Agreement was also taken from the **"directive"** to her as a member of the review team that there had been discussions with management of the claimant. (Emphasis supplied).

[227] In paragraph 1 of his witness statement dated 22nd August 2008 **Dunley Auguste** states that he had been employed with government for the past 28 years in the Ministry of Agriculture. He had held the office of Deputy Permanent Secretary for 7 years from 2001 and prior thereto that of Deputy Director of Agricultural Services from 1992 to 2001.

[228] Senior Counsel for the claimant pointed out that although this witness purported to speak of matters as though they were within his personal knowledge, cross-examination showed that he had obtained almost all of his information to which he deposed from Government records. For example when he purported to speak of matters such as Government's vision and objectives regarding the subject lands he ought to have disclosed that that information was secondary as well as the source.

[229] In similar vein learned Senior Counsel for the claimant submitted in paragraph 20 of his closing arguments that Dunley Auguste had outlined the conclusions of the July 1997 Report described as the Revised Draft (Annex 1 to his witness statement) and having regard to the central issues raised therein submitted that such evidence did not advance the case for the defendant not being primary evidence and no hearsay notice having been served pursuant to section 55 of the Evidence Act. I fully agree.

[230] His evidence in cross-examination confirmed that there seemed to have been little evidence in the Ministry of Agriculture of **what exactly comprised the River Doree Estate the subject matter of the lease agreement** and also confirmed that the figure of 1337 acres was itself questioned by River Doree and remained unchallenged. (Emphasis supplied).

[231] Before addressing the evidence of **Rufina Paul** the Sustainable Development Consultant who in May 1995 as Chief Agricultural Planning Officer in the Ministry of Agriculture had been appointed to head a team formed to conduct a study on the Economic and Social Impact of River Doree Holdings on the surrounding communities and submit the report three months after the date of commencement the following observations would in my view be apropos:

(1) Dunley Auguste exhibited two reports to his witness statement, viz:

  (i) Economic Review of River Doree Holdings Limited, Revised Draft July 1997;

  (ii) The Dunstan Campbell Final Report, July 1999.

(2) These reports were commissioned by Cabinet, the purpose of the Dunstan Campbell Report being to ascertain whether the claimant had complied with Clause 9 of the Lease Agreement. This was **after** the option to purchase had been exercised by the claimant.

(3) **Rufina Paul** exhibited only the Economic Review of River Doree Holdings Limited, Revised Draft, July 1997. (Annex 1).

(4) There are no signatories to the Economic Review as noted earlier in the judgment.

(5) Rufina Paul is a signatory only to the Dunstan Campbell Report July 1999.

(6) This case raised conflicts of fact, regarding (a) the operations of the claimant, (b) the apprising of Government by the claimant of modifications to the development programme and development plan and the reasons for them and (c) the numerous meetings with Prime Minister John Compton and other functionaries. Mr. Soeren Hofdhal gave primary evidence of these matters. On the other hand, no primary evidence was given challenging the evidence of Mr. Hofdhal. Instead, reliance was placed on numerous reports made ex post facto the exercise of the option to purchase by the claimant which reports formed the substance of the evidence of Rufina Paul.

(7) The reports being relied on have no probative value. It is one thing Senior Counsel (correctly) submitted to rely on a report commissioned by the Government as providing the reason for governmental action. It is another to rely on those reports as proof of the facts contained therein when those facts are in dispute.

(8) The authors of Phipson on Evidence, 15th Edition (2000) at paragraph 36-27 puts it thus:

> "Inquisitions, surveys, assessments, reports and returns are admissible, but not generally conclusive, in proof of their contents when made under public authority, and in relation to matters of public interest or concern."

(9) Subsection (4)(a)(i) of section 55 of the **Evidence Act**, No. 5 of 2002 (of St. Lucia) makes provision for the reception of hearsay evidence in any proceedings, and states that:

> "Nothing in this section renders admissible in evidence in any legal proceedings –
>
> (i) a record made in the course of an investigation or inquiry."

The evidence led on behalf of the defendant is that many investigations were commissioned following the exercise of the option to purchase by the claimant.

(10) The failure to call **Dr. Dunstan Campbell**, the chairperson and team leader of the Review Committee of which Rufina Paul was a member, has not been satisfactorily explained in my view. Julius Polius testified that he (Dr. Campbell) was the author of the Report. Rufina Paul initially said that he was, but later stated that she did not know whether he drafted it. She is, however, a signatory to it. Indications point to the fact that as Chairperson of the Review Committee Dr. Campbell in all likelihood was the author of that Report. He was after all the person who passed it around by round robin for signature by other members.

(11) Notwithstanding the adverse conclusions arrived at therein, the claimant was not afforded the opportunity to see them and to comment or offer explanations thereon. This is plainly in blatant disregard or breach of the principles of fundamental fairness, particularly in the context of seeking to deprive the claimant of a major or substantial benefit, namely the transfer of the freehold interest. Rufina Paul's answer in this regard at page 106 of her cross-examination is:

> "I was only one member of the team and I cannot respond to that question for everybody, I was not the one delegating the responsibility, but I had my own information, which informed the team."

To the observation that there was no explanation from the claimant in the Dunstan Campbell Report and Rufina Paul having accepted this to be so, the answer that "... it was not in compliance with the terms of reference" is unacceptable.

[232] Pursuant to Part 29.5(1) of the **Civil Procedure Rules 2000** (CPR) Senior Counsel Stanley Marcus applied to strike out certain items of evidence contained in the report of Rufina Paul (Annex 1 of her witness statement) as set out in paragraphs 4(a) – 4(f) of the application on the ground that they were inadmissible as they breached Rule 29.5(1)(e) CPR which provides that:

> "A witness statement must
> (e) not include any matters of information or belief which are not admissible or, where admissible, must state the source of any information or belief."

Reliance was also placed on paragraph 37-01 of Phipson on Evidence, 15th Edition which states that:

> "The general reputation prevailing in the community; and the **opinions inferences** or beliefs of individuals whether witnesses or not are inadmissible as proof of material facts."

The application was granted for reasons which will shortly follow:

Mr. Marcus also moved the Court to rule that the said witness (Rufina Paul) should not be deemed to be an expert witness on the ground that she had breached Rule 32.14(3) CPR by failure to attach to her report copies of:

(a) all written instructions given to her;

(b) any supplemental instructions given to her since the original instructions were given; and

(c) a note of any oral instruction given to her and to certify that no other instruction than those disclosed have been received by her from the party instructing her, the party's legal practitioner or any other party acting on behalf of the party.

Claimant counsel's application was also granted by the Court for reasons which will also shortly follow.

[233] Senior Counsel submitted that the evidence of Rufina Paul, insofar as it purported to deal with factual matters should be rejected as being unreliable, untruthful, prevaricating and unconvincing. In this regard, reference was made to the following matters:

(1) She was unable to give a satisfactory coherent account of the coming into being of **the 1995 Economic Review Report** and **the Dunstan Campbell Report**. She began her evidence by stating that a request was made in 1995 for the Economic Review and that it was submitted in 1997.

(2) She was hard-pressed to say when the Economic Review which she alleged was started in 1995 was completed. Further, the mandate requested an analysis of the **social and economic impact on the surrounding communities**. As the August 21, 1995 letter ("SH47") from Permanent Secretary Cosmos Richardson to Mr. Hofdhal states:

> "As you may be aware **this exercise is being carried out with a view to enabling a fuller understanding and appreciation of the impact of such a venture. In consequence, providing useful information to guide the process of decision making in respect of future ventures of this nature".**

The 1997 mandate to the Dunstan Campbell Committee requested an investigation into whether River Doree Holdings had complied with the terms of the Lease Agreement. Their purposes and objectives were different. It is difficult to understand how the Dunstan Campbell Report could have adopted or followed the supposedly differently structured 1996 Financial and Economic Analysis, of which the Court has not had sight.

(3) Rufina Paul stated that the Economic Review was a review and there were things to be done after. The Dunstan Campbell Report followed after.

The Dunstan Campbell Report was the final report of the [1995] assignment. The Dunstan Campbell Report was a separate assignment subsequent to this one.

(4) Rufina Paul was unable to tell whether the Economic Review was a revised draft or a final draft and could not on her own state that the revised draft was adopted as the final one.

(5) She was ambivalent as to whether or not the Dunstan Campbell Committee met frequently or infrequently, giving as her position that frequently is a relative term and that the team met when required.

(6) She demonstrated that she had an interest to serve by repeating without being asked that the Committee set out to do a proper assignment and justify its conclusions.

(7) In evading to answer the question whether her team attempted to update in 1999 (Dunstan Campbell Report) information obtained for their 1997 operation, Rufina Paul denied being the team leader.

(8) She prevaricated in answering whether a period of 5 years in the life of a company was a long time for its circumstances to change, this question having been asked in the context of the information being used by the defendant regarding the claimant being outdated.

(9) She referred to a Financial and Economic Analysis done in 1996 with which the team that compiled the Dunstan Campbell Report concurred, but admitted that the 1996 Financial and Economic Analysis was not sent to River Doree Holdings or to Mr. Hofdhal for comment on the team's adverse conclusions. She again prevaricated, denying that the responsibility was in fact not hers.

(10) She however accepted that the Dunstan Campbell Report ought to have been sent to the claimant, but there was further

prevarication by her on whether or not this was done. At times she stated that it was not for her to do, but her final position was "That was, that was done but maybe not by me, not by me."

(11) Having accepted that the Dunstan Campbell team had to be fair to the claimant, in answer to the suggestion that the team had not been fair, Rufina Paul stated that "We were doing a technical review based on facts and so we had to deal with the technical aspects of the thing." This could not have been an appropriate answer to the suggestion of unfairness.

(12) Her further explanation was that what was involved in the "technical review" was to determine "what was required of River Doree to do and what was done, this is what we found out."

(13) She went on to deny that the Dunstan Campbell Report contained adverse comments and conclusions and asserted that it was a technical review.

(14) It is a fundamental weakness of Rufina Paul's evidence on the whole that following upon the 1995 mandate contained in letters of 3rd May and 21st August 1995, a Financial and Economic Analysis 1996 was prepared and has not been produced to the Court, leaving one to depend on (a) her word that it was followed and (b) an inference as to its contents. She went on to say that the 1997 report concurred with the findings of the 1996 Report and since the 1997 Report contained adverse conclusions against the claimant, it is the inference that the 1996 Report would also have contained adverse conclusions. **(This is a lack of cogent evidence to support a contention that the claimant is in breach of the Lease Agreement**).

(15) Rufina Paul admitted that although the 1995 mandate required **an assessment of the social and economic impact on the community** and although Mr. Hofdhal had supplied information regarding a list of 58 families, that information was not used in the assessment. To shift the blame or responsibility to the Community Development Ministry would not avail, since at no time did she say that when the mandate was received, it was pointed out that the requirements of the mandate were not her Ministry's responsibility.

(16) The Dunstan Campbell team drew inferences that the claimant had not been liquid, solvent or profitable, **although it did not do an in-depth analysis as required.**

(17) The answer in re-examination, that Rufina Paul did not solicit responses from River Doree but that the Committee did is rejected as being an afterthought and lacking altogether in particularity.

[234] Senior Counsel submitted that for these reasons reliance on the reports and the unfavourable conclusions drawn should be rejected as establishing that the claimant had been in breach of the Lease Agreement.

[235] I pause at this juncture to say that I have generally speaking been persuaded by and have consequently accepted Senior Counsel Stanley Marcus' assessment and analysis of Rufina Paul's testimony.

[236] For example the 3rd May 1995 letter which was written by the Permanent Secretary of the Ministry of Agriculture to Mr. Hofdhal and copied to the witness Ms. Rufina Paul stated that pursuant to a Cabinet decision a study was to be conducted and submitted three months after commencement by a team headed by her then Chief Agricultural Planning Officer of that Ministry on the Economic and Social Impact of River Doree Holdings on the surrounding communities.

[237] The result of this as emerged in cross-examination of the witness (pages 124 et seq) was a Revised Draft of an Economic and Financial Analysis in July 1997 which the witness said was informed by an analysis which was done previously. Incidentally the witness revealed that there also was a 1996 document which she said was the (financial) Analysis. So that emerging from the 1995 mandate were two documents and the team in the 1997 Revised Draft had concurred with the conclusion of the 1996 Economic and Financial Analysis. The 1996 Analysis was incidentally never produced.

[238] Further cross-examination of the witness disclosed that although Mr. Hofdhal had provided the team with a list of 58 families in the area for the purpose of assessing the social impact of River Doree on the surrounding communities that aspect of the mandate does not appear to have been addressed in the 1997 Analysis. Tacitly acknowledging that fact the witness went on to explain that was why the 1997 Revised Draft was captioned Economic and Financial Analysis not Social Impact adding that "because we could not have done that part (of the mandate) because of where it was situated."

[239] The 1997 Analysis was therefore clearly deficient – a fact which Ms. Paul ought to have disclosed in her witness statement or the report/analysis and which only came to light after rigorous cross-examination which was characteristic of the witness I venture to add.

[240] Continuing under further cross-examination Rufina Paul conceded that it was not feasible to carry out that component (the social impact) of the mandate "and that was why it (the report) was in draft and says Economic Review, the social part is not yet - - - that is why it is still hanging" and continues to hang to this day.

[241] When asked if she had the social report she replied that she could not answer later adding that she handed in the team's draft because after that time she had not got the scope to go and do what had to be done for the social aspect. The complete terms of reference she finally admitted could not have been done

because of institutional difficulties. That of course could have been disclosed in the report but was not and had to be extracted in cross-examination. Besides that the unchallenged evidence is that the information given to Mrs. Paul by River Doree included information on the social aspect and social spin-offs of their operations which the witness said she could not recall because she would have had to send it over to the Ministry of Community Development. This quite frankly is incredible especially in light of the fact that she then concurs in the 1997 Revised Draft Report with the adverse conclusions drawn in the said 1996 report which was never in fact produced and on which River Doree was not afforded an opportunity to comment.

[242] From all appearances this was replicated in the later Dunstan Campbell Report to which Rufina Paul's signature is conspicuously affixed. Judging from the circumstances in which that report was itself allegedly prepared, the absence as a witness of Dr. Dunstan Campbell the Chairperson/presenter and ostensibly the team leader is most regrettable.

[243] Further in the absence (in Dr. Campbell's report) of any commentary on the social impact of River Doree's operations on the surrounding communities it is inconceivable how Rufina Paul could in cross-examination deny that the 1997 Economic and Financial Analysis was not in her opinion deficient unfair and unbalanced – even in part.

The Evidence of Rufina Paul generally

[244] At the very outset learned Senior Counsel moved that certain parts of the witness statement of this witness (notably parts of her report which were annexed to it) should be deemed inadmissible and ought to be struck out by the Court as being contrary to the Rules of Evidence. With the agreement of Mrs. Taylor-Alexander, Mr. Stanley Marcus made a formal written application to strike out parts of Mrs. Rufina Jean Paul's witness statement as being inadmissible on the ground that they breached Part 29.5(1)(e) of the **Civil Procedure Rules (CPR) 2000** which states that:

> "A witness statement must
> (e) not include any matters of information or belief which are not admissible or, where admissible, must state the source of any matters of information or belief."

Reliance was placed on paragraph 37-01 of Phipson on Evidence 15th Edition which stipulates that:-

> "The general reputation prevailing in the community; and **the opinions** inferences or beliefs of individuals whether witnesses or not are inadmissible as proof of material facts."

The parts of the witness statement which counsel contended infringed Part 29.5 of the **CPR** were set out at paragraphs 4(a) to 4(f) of the application and represent opinions and/or inferences drawn from the Economic Assessment Review of River Doree Holdings Limited Revised Draft July 1997.

[245] Opposing the entire application the learned Solicitor General relied on section 55(1) of the Evidence Act, Cap 4.1(5) of the Laws of Saint Lucia which she said spoke to exceptions generally and to the hearsay rule in particular as it related to documentary records. Referring to subsection 55(2) learned counsel argued that it could not reasonably be expected having regard to the time lapse since the witness was supplied or acquired the information and to all the circumstances, to have any recollection of the matters dealt with in that information and insofar as Part 29.5 CPR sought to exclude such statements it was based on the principle that such statements were hearsay and The Evidence Act provides exceptions to the hearsay rule.

[246] Mrs. Taylor-Alexander further submitted that the manner in which this document (Economic Review Revised Draft July 1997), was prepared, the office held by the witness at the time, the information supplied to the officer, the data obtained by the officer and the function that she was supposed to have performed with that data allows this document to fall within one of the exceptions to the hearsay rule, in that she compiled information that was given to her by her various officers, whose function it was to collect such data and she analyzed and crunched that data, assessed that data and provided a report, which is not her opinion, but represents

a compilation of data and certainly that falls within the exception identified in Section 55 of the **Evidence Act**.

[247] Section 55 of the **Evidence Act** Mr. Marcus responded was totally inapplicable and was in pari materia with the **Civil Evidence (Amendment) Act 1968** of the UK. A statement in a document he continued is admissible in any proceeding as evidence of any fact stated therein of which direct oral evidence would be admissible. If one looks at counsel's objections Mr. Marcus stressed, they were based on the fact that they are inferences: these statements are inferences or opinions; that is the basis of the objection and that is why Phipson makes it clear that opinion evidence is inadmissible and that inferences are inadmissible. And the Court had the power to strike out such statement(s) under Part 29.5(2) CPR.

[248] Mr. Marcus finally pointed out that he had not referred to a single item of hearsay in his application to strike out. The six items of evidence sought to be struck out were all opinion or inferences. Here Mrs. Taylor-Alexander interjected that she had never understood the Court to exclude opinion evidence – it was all a question of how much weight the Court attached to it. Whereupon Mr. Marcus referred to Section 64 of the **Evidence Act** which stipulates that: "Evidence of an opinion is not admissible to prove the existence of a fact."

[249] Developing that argument Senior Counsel emphasized that the Court had no discretion to admit inadmissible evidence. It certainly had a discretion to exclude admissible evidence he added in the interest of fairness – where for example the prejudicial effect outweighed the probative value but basically the court had no discretion legally to admit inadmissible evidence. I fully concur.

[250] And this is fortified by the fact that earlier in the trial the Court ruled that the witness (Rufina Paul) ought not to be deemed an expert witness inasmuch as she had breached Rule 32.14(3) CPR by failure to attach to her report copies of (a) all written instructions given to her; (b) any supplemental instructions given to her since the original instructions were given; and (c) a note of any oral instructions

given to her and she must certify that no other instruction than those disclosed have been received by her from the party instructing her, the party's legal practitioner or any other person acting on behalf of the party.

[251] Reference was made to the judgment of Barrow, J.A. in Civil Appeal No. 10 of 2004 out of the Commonwealth of Dominica where the learned Judge held at paragraph 9 that:

> "The breaches of the rules i.e. 32.14.2 and 32.14.3 were committed in the presentation of the expert evidence were egregious. The parties were lucky to escape the consequences of such breaches. It would have been entirely appropriate, because it would have been proportionate to the scale of the violations, for the judge to refuse to receive the evidence of both expert witnesses. The administration of justice cannot countenance the conduct of litigation in such flagrant violation of the rules specifically designed to protect the courts against the danger of deception by apparently credible expertise that conceals its true intent of promoting the interests of its purchaser. Expert evidence of that character will often be of limited, if any true, value".

In the final analysis the Court ruled in favour of admitting the evidence of the witness but not as an expert but as an ordinary witness in light of the fact that the report was originally prepared at a time when the requirements of rule 32.14(3) CPR could not possibly have been complied with by the witness but the said report was later adopted wholesale as it were without any regard for the mandatory requirements of Rule 32.14(3) CPR.

[252] Having been deemed not to be an expert witness Rufina Paul would not be legally entitled to express opinions or draw inferences as she purportedly did. Having lost the status of an expert witness she is permitted to testify on primary facts only unless she could bring herself within an exception to the rule requiring her to prove her account by primary facts.

[253] The attention of the Court was subsequently drawn by Mrs. Taylor-Alexander that the report attached to the witness statement of Rufina Paul was in fact already in evidence as it had been introduced as an annex to Dr. Dunstan Campbell's Report

without objection when Dunley Auguste gave evidence. So that evidence in another form was before the Court. In that regard it did not stop it from being an annex to the Dunstan Campbell Report in its entirety. Mr. Marcus however quite correctly pointed out that Dunley Auguste who testified about the said report told the Court that he was a Permanent Secretary who was relying on the records and this was one of them. He did not come to deal with its probative value or its authenticity and could not even say that the report was used as such a basis. He was clearly not in a position to help in that regard learned Senior Counsel asserted.

[254] So that in the context of Mr. Marcus' application to strike out as inadmissible the items of evidence in the witness statement of Rufina Paul set out in paragraphs 4(a) to 4(f) of the application as infringing Rule 29.5(1)(e) RSC, the application was accordingly granted.

[255] The fourth and final witness for the defence was **Emmanuel Clery** an Agricultural Extension Officer who according to his witness statement dated 2nd September 2008 was responsible for vegetable production islandwide which involved the supervision of eight agricultural regions. The role and function of an extension officer he stated was to advise farmers on the implementation, production and protection of their crops. He had always been employed with the Ministry of Agriculture he revealed since 1973 firstly as an Extension Officer assigned to the Black Bay project and subsequently as an Area Extension Officer in Region 5 which encompassed inter alia part of the River Doree lands and was familiar with their operations having responsibility with them as an Oversight and Advisory Extension Officer he disclosed.

[256] In paragraph 4 of his witness statement Mr. Clery said that he visited River Doree to offer advice on crop protection and production and also for monitoring and production data. Their visits (meaning his own visits and that of other Extension Officers in the district) he added were less frequent to these estates than to other rural holdings as River Doree had provided itself with its own expertise.

[257] Paragraphs 5 and 6 of Mr. Clery's witness statement read as follows:-

> 5. I formed part of a study commissioned by the Ministry of Agriculture in 2002; its purpose was a land rationalisation for the River Doree lands which included identifying available land for relocating farmers displaced by the Vielle L'itre lands. The Vielle L'itre lands had been acquired for reforestation.
>
> 6. The total acreage of the River Doree lands was approximately 1300, of which 500 were to have been divided in 5 acre farmer lots and housing lots between 7 – 13 thousand square feet.

In paragraph 8 Mr. Clery declared:

> 8. At the time when the cocoa trees were cut down, the approval of the Government of Saint Lucia was not sought. This too was contrary to the specific provisions of the lease.

[258] When asked what the expression "land rationalisation" meant in the context of paragraph 5 of his witness statement the witness explained that this was based on his understanding that the Ministry of Agriculture was at the time in the process of relocating some farmers from the Woodlands and Vielle L'itre areas which had been taken over by the Forestry Division for reforestation of the water catchment area and suitable areas at River Doree were identified as being suitable for relocation of the farmers.

[259] Turning to paragraph 7 of the witness statement claimant counsel submitted that the main thrust of Emmanuel Clery's evidence appeared to be to show that the claimant had breached the Lease Agreement by cutting down the larger cocoa acreages at Mont Lezard and Parc Estate and replacing them with bananas and hot peppers and that the approval of the Government was not sought in order to do so.

[260] Cross-examination however revealed that the witness was evasive in giving his answers and spoke of the claimant as being in breach of the Lease Agreement in 1988 – 1989 when in actual fact he himself had first read its terms in the year

2000. He further stated in paragraph 7 of his witness statement that he recalled "the Ministry of Agriculture and me having concerns about the destruction of the cocoa plantations" but began denying that he personally had had concerns by stating (at page 180): "I did not have concerns, I was saying ... ... all I said was that there were concerns expressed." He attributed the concerns to the farmers and the public but avoided stating in respect of which plantation or farm those concerns had been expressed. Notably, the witness avoided dealing with Tabs 17 and 18 of Mr. Hofdhal's witness statement which consisted of an exchange of letters between River Doree Holdings and the Ministry of Agriculture in which the Ministry gave approval for the diversification from cocoa to other crops.

[261] Finally claimant counsel further pointed out that the letter from Mr. Hofdhal to the Ministry of Agriculture dated 23rd June 1988 informing the Ministry that River Doree Holdings proposed cutting down 5 acres of Robusta coffee trees at Parc Estate to be replaced by bananas and cocoa and the Ministry's response dated 4th July 1988 specifically referring to "Coffee and Cocoa Production" and indicating that the claimant's intention to plant cocoa was compatible with the Ministry's programme, clearly show consensus between the respective parties on that issue.

The closing chapter and summing up

[262] I have at last come to the closing stages of this most interesting and intriguing saga which has proved to be a formidable exercise. As learned counsel on each side recognized the evidence was voluminous and I am deeply indebted to them for their lucid and erudite presentations and guidance throughout the trial which have immensely alleviated my burden.

[263] Permit me at the same time to apologise for the inordinate delay in rendering this judgment. By way of mitigation though not exoneration I would disclose that the first of several transcripts (some of which were very bulky) were only delivered to the Registry months after the trial and eventually reached my chambers sometime thereafter.

[264] Be that as it may, the pith and substance of this case in my view really centre on the construction/interpretation of the terms and conditions of an agricultural lease dated 20th February 1987 between the Government of St. Lucia and River Doree Holdings Limited in respect of 1,337 acres of land and buildings situate in the quarter of Choiseul and Laborie for a term of fifty years with an option to renew for a further twenty five years subject to certain terms and conditions.

[265] The Lease also contained an option to purchase the lands "at any time after the end of the tenth year of the term."

[266] On 10th January 1997 the claimant sought to exercise the option and the defendant refused to convey following which the claimant instituted the present suit seeking inter alia, a declaration that it is entitled to have the remainder of the leased lands then in its possession transferred to it whereupon the defendant through lead counsel Solicitor General Mrs. Georgis Taylor-Alexander applied to the Court for a ruling as a preliminary point as to the true construction of Clause 9(9) of the Lease which created the option to purchase.

[267] On 27th October 2006 Master Brian Cottle (as he then was) ruled that Clause 9(9) (which is set out at paragraph 7 herein) when read in conjunction with the preamble of the lease at letter E (which is recited at paragraph 9) made it clear **that the option to purchase was conditioned upon the Lessee having satisfactorily carried out the terms and conditions of the lease including the Development Programme** (as defined and set out in Schedule 6 of the Lease and modified and updated from time by Government and the Lessee). With this the Court fully concurred and rejected Senior Counsel's submission that an option to purchase was collateral to independent of and not an incident to the relationship of landlord and tenant. The Court further agrees that in construing the meaning of the option itself regard must be had to the preamble of the lease at letter E the importance of which is emphasized by the fact that it is here that the parties had provided for payment of the lease rent. The cases of **Woodall v Clifton**[2] and

[2] (1705) 2 Ch. 257, 259 and 279

Sherwood v Tucker[3] relied on by Senior Counsel are with respect in my view distinguishable in the circumstances.

[268] The claimant's claim is set out in the statement of claim filed 2nd August 2005 and is summarized in paragraphs 4 to 6 herein.

The Issues

Briefly the claim is for a declaration that the claimant is entitled after the expiration of ten (10) years from 24th October 1986 to have the title to the subject lands then in its possession conveyed to it in accordance with the terms and conditions of the Lease Agreement dated 20th February 1987 having discharged its obligations either wholly or substantially arising under the deed of lease and having validly exercised its option to purchase/acquire the said lands (described in the Lease Agreement as 1,337 acres) by notice in writing dated 10th January 1997 to the defendant/lessor.

[269] The defence and counterclaim which was filed on 30th September 2005 disputes the claim on the basis that the claimant failed to discharge its obligations satisfactorily more specifically those set out in clause 9(11) of the Lease Agreement relating to the granting to the claimant of an Alien's Landholding Licence containing conditions designed to ensure that as far as practicable the Development Programme, on pain of forfeiture of the said lands and buildings, shall be carried out in accordance with the terms and conditions of the lease. The claimant contends that these may be described as conditions subsequent to its grant.

[270] Paragraph 16 of the judgment sets out the particulars of defence and paragraphs 17 and 18 plead a counterclaim by the defendant for alleged breach by the claimant of its obligations in having failed adequately or at all to perform its obligations as contained in the Lease Agreement. The crucial issue/question which therefore falls to be determined is whether the claimant did in fact discharge its

[3] (1924) 2 Ch. 440, 449 and 445

obligations satisfactorily or substantially in respect of the Development Programme and the terms and conditions pertaining to the lease.

Development Programme

[271] The objectives and obligations of the Development Programme upon which so much hinges in this case are set out at paragraphs 27-30 including factors to be addressed in their implementation as well as stipulating which crops were to be cultivated with targets to be achieved by 1991. These are enumerated in paragraph 30. Out of 1337 acres of land comprising River Doree Holdings, 820 acres were targeted for full time production by the end of 1991 while 300 acres were to be allocated to small farmers. This in effect is what the development programme entailed as modified and updated from time to time by the parties.

[272] It is noteworthy that at trial the claimant (Mr. Hofdhal) admitted that the claimant company had instructed its attorneys (McNamara & Co.) to draft the lease agreement and that the deliverables expected under the lease agreement were identified after a thorough assessment of the estate by experts of the soil type and topography to determine its commercial and agricultural suitability.

[273] In a lucid and clearly articulated exposition (see paragraphs 36-38) the learned Solicitor General submitted that the claimant River Doree had evidently placed too much emphasis on circumstances which it claimed surrounded the lease than on the actual terms of the lease itself. As indicated at paragraphs 11 and 12 the exercise of the option to purchase by the claimant under Clause 9(9) was and is conditional upon the Lessee having satisfactorily carried out the terms and conditions of the lease including the Development Programme and the defendant granting to the claimant a licence under the Alien's (Landholding Regulation) Laws which was to contain conditions which were designed to ensure that as far as practicable the Development Programme on pain of forfeiture of the said lands and buildings were to be carried out in accordance with the terms and conditions of the lease.

[274] Hence it is clear that the proper exercise of the option to purchase by the claimant company on the expiration of the initial ten year term was dependent upon:

(i) the satisfactory carrying out of the terms and conditions of the lease including the Development Programme; and

(ii) the defendant granting to the claimant company a licence under the Alien's (Landholding Regulation) Laws which was to contain conditions designed to ensure that as far as practicable the Development Programme on pain of forfeiture of the said lands and buildings were to be carried out in accordance with the terms and conditions of the Lease.

Witness statement of Soeren Hofdhal

[275] As stated earlier Mr. Soeren Hofdhal, Manager of the Core Farm since it was started in 1986 to the present and who had participated in the initial discussions with Government with a view to purchasing the River Doree lands outright was the key claimant witness and apart from the years 2006 – 2008 when he was based outside of St. Lucia he had served throughout as manager of the farm known as River Doree Holdings Limited. As the main claimant witness his witness statement dated 23rd May 2008 consisted of twenty-eight pages with no fewer than eighty-five documentary exhibits attached providing a comprehensive account of matters pertaining to the registration of the fifty-year agricultural Lease Agreement dated 20th February 1987 between the Government of St. Lucia and River Doree Holdings Limited and its operations from 24th October 1986 to 23rd October 1996 that is to say during the initial 10–year term and some years beyond.

[276] Mr. Hofdhal himself was at the witness stand for the better part of two days. Amongst the numerous documentary exhibits submitted by him in evidence is a 123 page dossier entitled "Agricultural Production at Mont Lezard Estate 1986 – 1997" which furnished a comprehensive and well-reasoned account of the progress achieved in the initial ten years of the lease as well as the setbacks encountered in the development of River Doree Holdings Limited.

[277] This was well supported by the foreword provided by Prime Minister Sir John Compton in paragraph 46 of this judgment and is reflected in the Executive Summary of the study conducted by the claimant's expert witness Francis Leonce who was commissioned to assess the commercial, technological, social and developmental impact of a range of agricultural programmes and related activities carried out by River Doree Holdings and the Government of St. Lucia and who opined that:

> "... ... while all the objectives of the Development Programme were not met to the extent expected partly due to unverified assumptions River Doree Holdings did achieve critical benefits for agricultural diversification in St. Lucia."

[278] Generally speaking Mr. Hofdhal impressed as a truthful and knowledgeable witness with a wealth of experience and expertise in agronomy and agribusiness. His evidence in chief as contained in his witness statement and his testimony in cross-examination as well as his general responses and answers to specific issues raised in the Rufina Paul Report largely accorded with the views, opinions and findings expressed by the Agribusiness consultant/expert Mr. Francis S. Leonce in his report regarding an assessment of agricultural development activities of River Doree Holdings Limited on 1337 acres of land situate in Choiseul and Laborie in compliance with a Development Programme which formed part of a 50-year lease agreement between River Doree Holdings Limited and the Government of St. Lucia.

The Development Programme

[279] In the Executive Summary of his report Mr. Leonce wrote:

> "The development programme called for implementation of division and sale of lands for agricultural holdings and house lots; formation of a Farmers' Association and for the remaining lands, estimated at about 800 acres to be developed as a core-farm with a stipulated Production Programme."
>
> "The Production Programme required 740 acres of the core-farm to be cultivated with specified crops of which bananas and pineapples would be

dominant and together occupying about 550 acres. The remaining lands would be cultivated with tree crops cocoa/coffee and coconuts."

[280] The sale of lands for agricultural holdings and associated developments such as formation of Farmers' Association could not be implemented as planned, as the farmers who were originally occupying the lands did not have the capacity to invest. Other persons who were able to purchase were not residents of the area and were generally not interested in pursuing the goals of the development programme.

[281] Implementation of the Production Programme had to take into account the availability of arable lands to effectively accommodate the requirements of the stipulated crops and scope of production. This involved consideration of land capability for determining lands suitable for cultivation of crops and those which should be left undisturbed for conservation. As a result of these considerations, arable lands were reduced to 465 acres, making it impossible to reach the production targets of the Production Programme.

[282] Banana and pineapple production was expected to be the main revenue earners to sustain the operations following the initial investments in lands, infrastructure and equipment. Banana was not sufficiently productive, although it occupied a large portion of the lands, and pineapple production was discontinued after a promising start in export marketing. This was due to crop quarantine dictates beyond the control of River Doree Holdings

[283] To address these challenges and to better exploit the productive capacity of the arable soils, management introduced the production of annual crops such as vegetables, hot peppers, melons, sweet potatoes, etc together with the application of drip irrigation and other appropriate technologies. These have been profitable but revenues have not been sufficient to meet the requirements of the Development Programme.

[284] The hot pepper production for overseas export has been particularly successful and this development now involves marketing of supplies from hundreds of farmers from other districts in St. Lucia, coordinated by the management of River Doree Holdings.

[285] In addition, the hot pepper programme with associated rotation crops and the pineapple production served as opportunities for the promotion and demonstration of a model for export crop development for agriculture diversification.

[286] The shortfalls from bananas and pineapple production and sale of lands hampered the Development Programme. Land tenure constraints prevented River Doree from accessing credit for the continuation of the Development Programme as envisaged.

[287] The study revealed that while all the objectives of the Development Programme were not met to the extent expected, partly due to unverified assumptions, River Doree Holdings did achieve critical benefits for agricultural diversification in St. Lucia. To my mind that conclusion/finding encapsulates the quality of performance of the agricultural programmes and related activities carried out by River Doree Holdings Limited within the framework of the implementation of the land lease agreement with the Government of St. Lucia.

[288] The report arising from the study conducted by Mr. Francis Leonce entailed:

(1) A review of relevant documents, letters and reports dealing with plans, programmes and performance of River Doree Holdings Limited with respect to the Development Programme which formed part of the Lease Agreement.

(2) Visits to the River Doree Holdings development lands to observe the nature and current utilization of the lands for the purposes outlined in the Development Programme.

(3) Interviews with stakeholders in the agricultural activities of River Doree Holdings. These included farmers whose holdings were purchased from the project and farmers from areas who marketed through River Doree Holdings, representatives of the Ministry of Agriculture, Foods and Fisheries (MAFF), regional agricultural institutions and agri-business organizations.

(4) Discussions with the Manager of River Doree Holdings on findings from the above.

(5) Examination of the activities and achievements of River Doree Holdings, in the context of the general experience in agriculture development and crop diversification in St. Lucia during the corresponding years.

And the aim was to assess the impact of agricultural activities of River Doree Holdings Limited on agriculture developments in St. Lucia and in so doing establish the extent of compliance with the Lease Agreement.

[289] As I see it the unchallenged and irrefutable evidence for failure by the claimant to meet the crop production targets set in the Development Programme is that the implementation of the Production Programme had to take into account the availability of arable lands and other agronomic and commercial considerations to effectively accommodate the requirements of the stipulated crops and scope of production. This involved consideration of land capability for determining lands suitable for cultivation of crops and those which should be left undisturbed for conservation.

[290] As a result of these considerations arable lands were reduced to 465 acres making it impossible to reach the projected targets. Consequently the Production Programme in the Lease had to be adjusted to suit the realities of implementation. This meant that the assumed acreage of cultivable lands and the ensuing cropping stipulations were greatly overestimated. This established the impracticability of achieving the crop production targets.

Exercise of the option to purchase

[291] A chronology by Soeren Hofdhal of what happened in respect of the exercise of the option to purchase commenced with a letter to him dated 3rd May 1995 from Permanent Secretary Cosmos Richardson in which Cabinet had directed the Ministry of Agriculture cojointly with the Ministry of Social Services to conduct a study headed by Ms. Rufina Paul Chief Agricultural Planning Officer on the Economic and Social Impact of River Doree Holdings Limited on the surrounding communities with the report to be completed according to the terms of reference three months after commencement. Mr. Hofdhal was requested to assist by providing certain information. That letter was tendered in evidence as **Exhibit SH47**.

[292] By letter dated 10th January 1997 (Exhibit SH48) Messrs McNamara & Co Solicitors for River Doree wrote to Mr. Cosmos Richardson, Permanent Secretary in the Ministry of Agriculture giving notice in accordance with Clause 9(9) of the Lease Agreement of the desire of River Doree to purchase the absolute ownership of the lands and buildings then in its possession in accordance with the terms and conditions of the lease.

[293] Four letters (Exhibits Sh49, SH51, SH52 and SH53) by Messrs McNamara & Co to the Ministry of Agriculture spanning 14th February 1997 to 11th December 1997 seeking a response to River Doree's notice of intention dated 10th January 1997 to purchase the absolute ownership of the River Doree lands and buildings in accordance with the terms and conditions of the lease followed. The sole response from the Ministry of Agriculture dated 24th February 1997 merely indicated that the Ministry was studying the matter in order to be in a position to issue an informed response. In a letter dated 11th December 1997 to the Honourable Cas Elias then Permanent Secretary in the Ministry of Agriculture Stephen McNamara promised to submit to the Ministry a report of River Doree's activities over the last ten years formalised by Mr. Hofdhal. This was duly done and submitted as Exhibit SH11 – Agricultural Production at Mt. Lezard Estate 1986 – 1997 – Mt. Lezard being the Holding Company of River Doree Holdings Limited.

[294] By letter dated 2nd February 1998 (Exhibits SH54) River Doree's Solicitors wrote to the Ministry of Agriculture requesting the outcome of the Review Committee and still seeking a response to their letter dated 10th January 1997 regarding River Doree's notice of its intention to exercise the option to purchase the absolute ownership of the land and buildings then in their possession in accordance with the terms and conditions of the lease.

[295] A copy of the Interim Report of the Review Committee dated 21st June 1999 (Exhibit SH56) which had been commissioned by Cabinet by letter dated 3rd May 1995 to conduct an inquiry into the Economic and Social Impact of River Doree on the surrounding communities was finally sent to River Doree but without copies of the studies and reports on which it was allegedly based. The Final Report (Exhibits SH58,59 and 60 – 64) dated 15th July and 20th July 1999 respectively was forwarded to River Doree Holdings Limited requesting a response by 13th August 1999. The Court notes that the Report had taken four years to complete and yet a response was requested in less than four weeks. Extension of time to 1st October 1999 was requested by letter dated 12th August 1999 to respond to the Report of the Committee.

[296] On 11th August 1999 the Ministry of Agriculture through the Chief Forestry Officer officially requested (Exhibit SH65) that River Doree reserve a hundred or more acres of agricultural land for the Government. Exhibit SH68 and 69 dated 6th October 1999 and 11th January 2000 respectively show meetings were held with Government Officials. Indeed by letter dated 6th March 2002 (Exhibit SH71) the Ministry of Agriculture set up a meeting to facilitate a resolution of the issues surrounding the lease – over four years after the notice of intention to purchase had been served on Government by Messrs McNamara on behalf of River Doree.

[297] Subsequently Mr. Hofdhal related how surveyors came on to the River Doree property without permission and were sent away only to return later with an official notification that they had been asked to survey 18 acres of land pursuant to a Government Conclusion whereupon River Doree's Solicitors wrote to the Prime

Minister (Dr. Kenny Anthony) on 26th February 2003 (Exhibit SH72) following which by letter dated 16th June 2003 (Exhibit SH73) approximately six and a half years after service of the claimant's Notice of Intention to exercise the option to purchase the said lands the Government of St. Lucia acting by its Attorney General confirmed that:

> "In view of the above, the Government of Saint Lucia in accordance with the provisions contained in Clause 9(1) of the said Lease agreement hereby gives notice of its intention to determine the said Lease as a consequence of your Company's failure to comply with the obligations referred to in Clauses (8) and (B) of the Lease Agreement."

The Attorney General was here referring to a report compiled by a four member team (including Joan John-Norville) with a specific mandate to review the allocation and utilization of the River Doree lands and also to identify lands for relocation of persons who had been displaced by the acquisition by Government of lands for forest and water reserves.

[298] Following upon a letter by River Doree's Solicitors to Government on 8th July 2003 (Exhibit SH74) Mr. Stephen McNamara met with Dr. James Fletcher, Cabinet Secretary on or about 15th September 2003 who indicated that Government wished to achieve the following:

(a) That River Doree would keep such of the land as it can reasonably utilize for its present farming needs together with some extra land to allow for expansion in the future.

(b) Government would get back possession of an area of land (the size of which the Cabinet Secretary was not able to disclose) which land Government would then use to satisfy the needs of the adjacent communities.

As a follow up to that meeting Messrs Michael Gordon, QC and Stephen McNamara on 30th January 2004 issued a joint letter (Exhibit SH75) with a proposal and Mr. Michael Gordon, QC again wrote on 28th February 2004 (Exhibit SH76) further to a meeting held on 13th February 2004 which resulted in a response to Mr. Michael Gordon QC from the Attorney General's Office on 22nd

April 2004 (Exhibit SH77) that Cabinet having considered the proposal had decided to appoint a four person team to further discuss the matter.

[299] The upshot of all of this is that after much further toing and froing no consensus was reached by the parties and by the end of 2004, Dr. Kenny D. Anthony, Prime Minister of St. Lucia, wrote to Mr. Stephen McNamara "making it abundantly clear that the Government of St. Lucia had no objections to River Doree Holdings Limited commencing legal action to establish their legal rights and should that course of action be adopted Government would use every legal means available to protect its interest and the interest of the citizens of St. Lucia."

Findings and Conclusions

[300] Having reviewed the pleadings of the parties as well as the evidence of their witnesses and the submissions of Learned Counsel the crucial issue which to my mind falls to be determined is whether after the expiration of the initial ten years of the Lease Agreement the claimant is entitled to a declaration to have the title to the River Doree lands then in its possession transferred to it (by Deed of Sale executed by the defendant) in accordance with the terms and conditions of the said Lease Agreement dated 20th February 1987 the claimant having discharged its obligations thereunder satisfactorily and having validly exercised its option to purchase/acquire the said lands (described in the Lease Agreement as 1,337 acres) by notice to the defendant/lessor in writing dated 10th January 1997.

[301] The claim was fundamentally opposed by the defendant on the basis that the claimant had failed to discharge its obligations satisfactorily more specifically those set out in clause 9(11) of the Lease Agreement relating to the granting to the claimant of an Alien's Landholding Licence containing conditions designed to ensure that as far as practicable the Development Programme, on pain of forfeiture of the said lands and buildings, shall be carried out in accordance with the terms and conditions of the lease.

[302] The claimant contends that those conditions may be described as conditions subsequent to the grant. I respectfully demur since the grant of an Alien's Licence to hold property as owner as referred to its Clause 9(11) of the Lease Agreement cannot be construed to be an automatic grant since the grant of the Alien's Licence in the case would invoke the exercise of a future executive discretion the exercise of which could not be circumscribed by an agreement entered into by hand.

[303] The claim for a declaration of title to the River Doree lands was further opposed on the grounds set out in paragraph 15 of the defence (i.e. paragraph 16 of the judgment) which alleges inter alia failure of the claimant to submit to and comply at all times with the Development Programme and any modification thereto as required by Schedule 3 of the Lease Agreement.

[304] By way of counterclaim the defendant contends that it had devised a specific development plan for the area where the property is located and had acquired and leased to the claimant specifically to execute its development. This in fact constitutes the pith and substance of the defendant's case as articulated by the learned Solicitor General Mrs. V. Georgis Taylor-Alexander who went on to assert that in breach of its obligations the claimant failed adequately or at all to fulfill the obligations contained in the Lease Agreement and failed to explore crop and agricultural methods to revolutionize the agricultural sector as hoped/intended with the result that the defendant found itself forced in the public interest to acquire the remaining portions of the land leased to River Doree Holdings for a public purpose to wit: Land Reform, Housing and Agricultural Development, Conservation and Tourism Development.

[305] In October 2006, three years before the trial, a point in limine was raised by Mrs. Taylor-Alexander who applied to the court for a ruling as to the true construction of Clause 9(9) of the Lease which created the option to purchase. This was heard and decided by Master Brian Cottle (as he then was) who ruled on 27th October 2006 that the clause in question clearly obliged the defendant to convey to the

claimant the lands which were the subject matter of the lease once certain conditions were met. The claimant's position was that the relevant conditions were to be found in Clauses 9(10) 9(11) and 9(12) only which pertained to purchase price, Alien's Licence and cost of registration of the Deed of Sale and Notarial fees. The defendant on the other hand argued that the lease must be read as a whole. The true intent and meaning of the option to purchase the learned Master held could only be understood if the clause is read in context and in construing the meaning of the option itself regard must be had to the preamble of the lease at letter E which is set out at paragraph 9 herein.

[306] The importance of the preamble to the parties the learned Master noted was emphasized by the fact that it was here that the parties had provided for payment of the lease rent. In conclusion the Master held that read in conjunction with Clause 9(9) it was clear that the option to purchase was and is conditioned upon the Lessee having satisfactorily carried out the terms and conditions of the lease including the Development Programme.

[307] This Court fully concurred with the learned Master's ruling holding further (as the Master also did) that Clause 9(9) was specifically made subject to Clause 9(11) which required the defendant to grant to the claimant a Licence under the Aliens' (Landholding Regulation) Laws free of charge which was to contain conditions "designed to ensure that so far as practicable the Development Programme on pain of forfeiture of the said lands and buildings, should be carried out in accordance with the terms and conditions of this Lease." That in the view of the Court underscores the core and raison d'être of the Lease Agreement.

[308] So that as at 10th January 1987, the burden which essentially rested on the claimant to prove on a balance of probabilities is:

(i) Whether River Doree Holdings Limited (the Lessee) had satisfactorily fulfilled the terms and conditions of the Deed of Lease including specifically its obligations in respect of the Development Programme as per Clause 9(9) of the Lease?

(ii) If not, whether any failure or non-compliance on the claimant's part to so do was with the knowledge and/or acquiescence of the Government of St. Lucia (the defendant) acting through its servants and/or agents (for the most part the Prime Minister, Sir John Compton or other Ministers of Government) as the claimant alleges and that the reasons for such failure or non-compliance were also known or communicated to Government representatives?

(iii) Whether any variation in the execution of the obligations by River Doree Holdings was made with the prior and/or subsequent approval, express or implied of the Government of St. Lucia acting by or through its servants and/or agents and that the reasons were either known by the Government's representatives or communicated to them?

(iv) Whether the acts and/or omissions of the Government were such that they prevented or hindered the discharge or fulfilment by River Doree of its obligations under the lease?

(v) Whether any complaints or objections to anything done by River Doree in purported discharge of its obligations were made by Government or its representatives during the operative period of the Lease i.e. from 1986-1997?

[309] I now proceed to answer those questions seriatim based on my assessment and evaluation of the evidence tendered to the court by the parties and their witnesses as well as the pertinent legal principles and case authorities adduced by learned counsel which have been immensely helpful and for which I am greatly indebted.

[310] As I see it there can be no gainsaying the fact and the evidence clearly shows that River Doree Holdings Limited failed to fulfil the terms and conditions of the Deed of Lease satisfactorily including specifically its obligations in respect of the Development Programme in accordance with Clause 9(9) of the Lease. In concluding the Executive Summary of his erudite and comprehensive study River

Doree's own expert Mr. Francis S. Leonce agreed that all the objectives of the Development Programme were not met to the extent expected due inter alia to unverified assumptions.

[311] The Development Programme called for implementation of division and sale of lands for agricultural holdings and house lots; formation of a Farmers' Association and for the remaining lands, estimated at about 800 acres to be developed as a core-farm with a stipulated Production Programme.

The Production Programme required 740 acres of the core-farm to be cultivated with specified crops of which bananas and pineapples would be dominant and together occupy about 550 acres. The remaining lands would be cultivated with tree crops, cocoa/coffee and coconuts.

The sale of lands for agricultural holdings and associated developments such as formation of a Farmers' Association the expert declared could not be implemented as planned, as the farmers who were originally occupying the lands did not have the capacity to invest. Other persons who were able to purchase were not residents of the area and were generally not interested in pursuing the goals of the development programme.

Implementation of the Production Programme had to take into account the availability of arable lands to effectively accommodate the requirements of the stipulated crops and scope of production. This involved consideration of land capability for determining lands suitable for cultivation of crops and those which should be left undisturbed for conservation. As a result of these considerations, arable lands were reduced to 465 acres, making it impossible to reach the production targets of the Production Programme.

[312] Banana and pineapple production were expected to be the dominant revenue earners to sustain the operations following the initial investments in lands, infrastructure and equipment. Bananas were not sufficiently productive, although it occupied a large portion of the lands, and pineapple production was

discontinued after a promising start in export marketing. This was due to crop quarantine dictates beyond the control of River Doree Holdings.

To address these challenges and to better exploit the productive capacity of the arable soils, management introduced the production of annual crops such as vegetables, hot peppers, melons, sweet potatoes, etc together with the application of drip irrigation and other appropriate technologies. These have been profitable but revenues have not been sufficient to meet the requirements of the Development Programme.

[313] The shortfalls from bananas and pineapple production and sale of lands hampered the development programme. Land tenure constraints prevented River Doree from accessing credit for the continuation of the development programme as envisaged and while it is true that all the targets of the Development Programme were not met to the extent expected partly due to unverified assumptions, River Doree did achieve critical benefits for agricultural diversification in St. Lucia Mr. Leonce pointed out. That I unhesitatingly accept.

[314] Mr. Stanley Marcus, SC, learned counsel for the claimant submitted that on the basis of the detailed account of River Doree's operations in their various aspects over the initial 10-year period of the lease and beyond there had been substantial performance of River Doree's obligations and that the doctrine of substantial performance applied and was relied on – the claimant's plea in this regard being that any failure on its part to comply specifically with the terms of the lease in so far as the Development Plan and the Development Programme were concerned was as a result of the acts or omissions of the Government.

[315] Reference was made to **9 Halsburys Laws**, 4th Edition paragraph 475 which states that:

> "**475. Substantial performance**. The rigour of the law on exact performance of an entire obligation is in some cases mitigated by the doctrine of substantial performance, whereby a party who has performed his obligation except for matters of a minor character will be allowed to

enforce the obligation of the other party subject to a counterclaim for damages in respect of the defects."

Reference was also made to **HOENIG v ISAAC**[4] and **H. DAKIN & CO LTD. v LEE**[5]. I pause to point out that the court recognizes that this is an agricultural lease in which the expression Development Programme is defined (see paragraph 65) and permitted modification and updating from time to time by the Government and the Lessee. It is therefore respectfully submitted that the doctrine of substantial performance as advocated by Senior Counsel would not strictly speaking be applicable in the circumstances.

[316] The terms and conditions of the lease were not in fact cast in stone. Indeed the objects of the Development Programme as set out in Schedule 6 were:

> "To transform the Leased Premises (presently (sic) in a state of decay) into a modern highly productive farm area
> To work for a well proportioned division between domestic food production – and export production
> Promote modern scientific agricultural methods and technology in combination with the best of traditional methods of the area."

[317] And whilst the Production Programme envisaged The Core Farm (of approximately 800 acres of arable lands) being cultivated in bananas, pineapples, fruit trees and cocoa/coffee in specified quantities over the five year period of 1987 – 1991; these were all <u>expected averages</u> with for example <u>an average production of 13 ton/acre of bananas</u>, coconuts were <u>expected to triple their production from the present 100,000lbs of copra in 1985 to 3000,000 in 1990</u>. (Emphasis supplied)

[318] The answer to the first question posed at paragraph 308 was canvassed as a preliminary point at paragraphs 7 to 12 of the judgment where Master Brian Cottle (as he then was) held and the Court agreed that to the option purchase was and is conditioned upon the Lessee having satisfactorily carried out the terms and conditions of the lease including the Development Programme. Further Clause 9(9) is specifically made subject to Clause 9(11) which requires the defendant to

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[4] (1952) 2AER 176.
[5] (1916) 1KB 566.

grant to the claimant a Licence under the Aliens (Landholding Regulation) Laws free of charge which was to contain conditions "designed to ensure that so far as practical the Development Programme, on pain of forfeiture of the said lands and buildings, shall be carried out in accordance with the terms and conditions of this lease."

[319] The claimant's claim is for a declaration that on 10th January 1997 River Doree Holdings became legally entitled to a transfer of the property forming part or forming what was then River Doree Holdings. Note is taken of Master Cottle's decision dated 27th October 2006 which narrowed the issues or clarified them by concluding (at paragraph 10) that the obligation of the Government to transfer title to the claimant was dependent on the satisfactory performance of the development programme or development plan by the claimant. So that given the specific terms of the Lease Agreement as executed between the parties the question is whether the Lessee satisfactorily carried out the terms and conditions of the Lease including the development programme. The defendant on its part has counterclaimed for damages for breach of the contract.

[320] Both issues that is the issue of the claimant's declaration to be legally entitled to transfer of the property forming part or what is now River Doree Holdings and the defendant's allegation of breach of contract by the claimant can conveniently be dealt with together since if the Court were to hold that the claimant's execution/performance of the terms and conditions of the Lease including the Development Programme was satisfactory the claimant's issue would be satisfied and the defendant's claim for damages for breach of contract would be defeated. Conversely should the Court conclude that the claimant's performance of its obligations under the Lease was not satisfactory its claim would be defeated and the defendant's counterclaim for damages for breach of contract would prevail. The crucial issue therefore is whether or not there was satisfactory performance by the claimant of the terms and conditions of the Lease including the Development Programme which in fact is the kernel of the case.

[321] Mr. Stanley Marcus, SC inclined to the view and would for his part equate substantial performance with satisfactory performance relying on **9 Halsbury's Laws 4th Edition paragraph 475** as set out in paragraph 315. The claimant (Mr. Soeren Hofdhal) he said had given a detailed account of the claimant's operations in their various aspects over the initial 10-year period of the Lease and beyond hence on the basis that the testimony of the claimant's witnesses in that regard were accepted as credible, he submitted that there would have been substantial performance of its obligations and that the doctrine of substantial performance would apply and could be relied on. The claimant's plea in that regard learned Senior Counsel further submitted was that failure on its part to comply specifically with the terms of the Lease so far as the Development Programme was concerned (which was denied) was as a result of the acts or omissions of the Government. The doctrine of frustration was however neither raised nor pleaded and could not be invoked in the circumstances the Court noted.

[322] Mr. Marcus also made the point that the claimant quite early in the tenancy had indicated to the defendant that the acreage of the subject lands was 1,137 acres and not 1,337 acres as stated in the Lease – a shortfall of 200 acres with a consequent shortfall in the quantity of arable land available and in respect of which there were stipulations regarding the acreage to be allotted to various crops. The claimant assumed counsel declared that since the defendant 'bona fide' believed that the 1,337 acres of land stated in the Lease Agreement actually existed on the ground (which was not in fact the case) the principles governing mutual mistake and abatement were applicable referring to **42 Halsbury's Laws 4th Edition** paragraph 118 which states that:

> "Where the vendor has not got the interest he has agreed to sell, the purchaser is in general entitled to take such interest as the vendor has subject to abatement of the price, notwithstanding that the purchaser obtains an interest materially different from that which he agreed to buy."

The evidence shows that the claimant did in actual fact offset the shortfall in acreage by withholding a portion of the basic rent pending resolution of the apparent discrepancy in acreage of the leasehold.

[323] Further, it is the claimant's case that from the inception of its operations it had kept the defendant abreast of all adjustments, development plans and programmes and had obtained approval or had at least received no objection from government when adjustments became necessary. The testimony of Soeren Hofdhal (SH17 and SH18) attests to that fact in that regard in the early stages in June/July 1988.

[324] It is however clear I venture to say that after River Doree had paid off the full basic rent for the subject lands in 1988 well ahead of the seven year schedule following a loan of US$900,000.00 from Barclays Bank Plc, the claimant assumed greater autonomy and control in the agricultural and technological development of River Doree Holdings than it had hitherto.

[325] By then the evidence shows that the claimant had in fact paid to the defendant the equivalent of the outright purchase price of US$1.4 million for the subject lands in basic rent which figure had at the outset been negotiated with the original owner (Eric Lawaetz) in 1986 but which sale was thwarted by government's refusal to grant an Alien's Licence to River Doree Holdings Ltd. to hold the freehold interest therein.

[326] Solicitor General Ms. Vivian Georgis Taylor-Alexander submitted that it had always been the claimant's avowed intention to acquire the freehold interest of the River Doree lands in St. Lucia with or without government's intervention. Such had been the pattern of the holding company elsewhere in Central and Latin America learned counsel pointed out.

[327] The defendant government on the other hand whilst minded to sell the said lands, was only prepared to do so on terms that it would be utilized ultimately to empower St. Lucians and small farmers in particular to really develop the agricultural sector. Government seemed reluctant to part with so much land of commercial value to aliens without ensuring that peasants and small farmers were empowered by land ownership and development and benefitted as a result.

[328] In sum, the management of River Doree yearned to exercise its option to purchase the remainder of the River Doree lands then in its possession at the end of the 10th year of the term in keeping with clause 9(9) of the Lease Agreement whilst the defendant appeared to be reluctant unwilling and, in the end downright refused "to let go of it" on the grounds that the claimant had not satisfactorily fulfilled its obligations in respect of the Development Programme which was one of the imperatives under clause 9(9) of the Lease Agreement.

[329] Further, the claimant had failed to discharge its obligations satisfactorily more specifically those set out in Clause 9(11) of the Lease Agreement relating to the granting to the claimant of an Alien's landholding licence containing conditions designed to ensure that as far as practicable the Development Programme, on pain of forfeiture of the said lands and buildings, shall be carried out in accordance with the terms and conditions of the lease.

[330] How else is it possible to explain the delay of six and a half years for the defendant to provide the claimant with a definitive and unequivocal response to its letter dated 10th January 1997 giving notice in writing of its desire to purchase the absolute ownership of the remainder of the River Doree lands and buildings in its possession in keeping with clause 9(9) of the Lease Agreement?

[331] In Section III of his report Francis Leonce commenting on the current production status of the River Doree circa 2003 noted that large expanses of arable lands now lay fallow in the core farm. No more than 25 per cent of the estimated cultivable land was currently in crop production. Management explained that this was a direct result of the constraints to re-establish pineapple production (once a flourishing export crop) or expand other crops due to unavailable credit for investment.

[332] Accessing investment funding was inhibited by the prolonged impasse between River Doree and Government regarding Management's application to purchase the lands in fulfilment of Lease obligations. Ownership of the land had to be resolved to allow for appropriate collateral for investment credit.

[333] It will be recalled that on 3rd May 1995 Cabinet had directed that the Ministry of Agriculture and the Ministry responsible for Social Services undertake a study of the economic and social impact of the River Doree Holdings Ltd. on the surrounding communities. The Ministries decided to conduct one study by a team headed by Mrs. Rufina Jean-Paul Chief Agricultural Officer **who was mandated by the terms of reference to submit the report three months after the date of commencement.** (Emphasis supplied)

[334] By letter dated 21st August 1995 Mr. Cosmos Richardson the Permanent Secretary of the Ministry of Agriculture informed Mr. Soeren Hofdhal that **the review team had completed preliminary investigation and research of relevant documentation** and was then in the process of discovering information that would facilitate the indepth analysis of the operation of River Doree Holdings over the last nine (9) years and soliciting information from him on an attached listing at his earliest opportunity and requesting that information readily retrievable from computerized database and management records be made available by Monday August 28th, 1995 when the review team would need to be taken on a tour of River Doree Holdings Ltd from 10:00 a.m. (Emphasis supplied)

[335] Strange to relate the Interim Report of the said Inquiry/Study into the economic and social impact of River Doree Holdings Ltd on the surrounding communities was sent **by letter dated 21st June 1999** to River Doree by James Fletcher the then Permanent Secretary in the Ministry of Agriculture without copies of the documents on which it was said to have been based. (Emphasis supplied)

[336] **On 1st July 1999** the Final Report of the Review Committee was sent to River Doree by Mr. Fletcher, that is over four years after Cabinet's decision setting up the study on 3rd May 1995. That incidentally would have been two and a half years after the claimant (Rivee Doree Holdings Ltd.) would have given notice to the defendant (Government) of its desire to purchase the freehold interest in the remaining lands and buildings then in its possession pursuant to clause 9(9) of the Lease Agreement.

[337] At trial, Rufina Paul was proffered as an expert witness but was deemed not to be such pursuant to Rule 32.14(3) CPR. My own assessment of this witness and evaluation of her evidence are comprehensively dealt with in paragraphs 233 to 243. As stated in paragraph 235 the Court was generally speaking persuaded by Senior Counsel's assessment and analysis of Rufina Paul's testimony.

[338] Further the Court finds great difficulty in placing any degree of reliance on the Dunstan Campbell Committee Report of which Rufina Paul was herself a member since her 1995 mandate requested an analysis of the social and economic impact of River Doree Holdings Ltd. on the surrounding communities with a view to enabling a further understanding and appreciation of the impact of such a venture thus providing useful information as a guide in the decision making process in respect of future ventures of this nature; whilst the mandate of the Dunstan Campbell Committee Report entailed an investigation into whether River Doree Holdings had complied with the terms of the Lease Agreement – obviously widely differing objectives. Yet the Dunstan Campbell Report adopted and/or followed the supposedly differently structured 1996 Financial and Economic Review which formed the basis of the 1995 Committee Report but was never in fact produced in evidence and the findings of which the Dunstan Campbell Report fully concurred with!

[339] In the final analysis there is no denying that the crucial question which falls to be decided in this case and which has taxed my mind throughout; is the first question posed in paragraph 308; that is to say whether, as at 10th January 1997 River Doree Holdings Limited had satisfactorily fulfilled the terms and conditions of the Deed of Lease dated 20th February 1987 including specifically the obligations in respect of the Development Programme as per Clause 9(9) of the Lease. The lease in actual fact took effect from 24th October 1986.

[340] As a pre-trial preliminary issue a ruling was sought by Ms. Taylor-Alexander counsel for the defendant as to the true construction of Clause 9(9) which created an option to purchase as defined in paragraph 7 herein. In concluding his decision

the learned Master Brian J. Cottle (as he then was) ruled on 27th October 2006 (at paragraph 11 herein) that "the option to purchase was and is conditional upon the Lessee having satisfactorily carried out the terms and conditions of the lease including the Development Programme. And with this the Court fully concurred.

[341] On the expiration of the tenth year of the term thereby created in keeping with Clause 9(9) of the Lease the claimant (Lessee) on 10th January 1997 duly gave notice in writing to the defendant (Government) of its desire to purchase the absolute ownership of the lands and buildings then subject to the lease. As the evidence shows the defendant (Government) declined to execute a Deed of Sale of the said lands and buildings in favour of the claimant in keeping with clause 9(9) of the Lease on the grounds that the claimant had not satisfactorily fulfilled the terms and conditions of the Lease and more specifically its obligations in respect of the Development Programme thereunder.

[342] But then it passes as more than a little strange that it took the defendant (Government) six and a half years to give the claimant a definitive and unequivocal response to its notice to exercise the option to purchase by finally serving a notice on the claimant by letter dated 16th June 2003 of its intention to determine the Lease Agreement in accordance with the provisions contained in Clause 9(1) as a consequence of the claimant's failure to comply with the obligations referred to in Clauses 8 and B of the Lease Agreement.

[343] In the intervening period of over six years (viz 1997-2003) the claimant remained in a limbo having long paid off the full basic rent of the lease in 1988 with a Barclays Bank Plc loan of US$900,000.00 and plans for further investment/development were meanwhile hampered by inaccessibility to any further credit on account of the claimant's tenure status. By 7th March 2005 Government had in fact served notice in writing on the claimant's attorneys of its intention to compulsorily acquire the subject lands for a public purpose and to commence proceedings under the Land Acquisition Ordinance, Chapter 109 of the Revised Laws of St. Lucia.

[344] All of this is in stark contrast to the Prime Minister Sir John Compton's own assessment in 1997 of River Doree's efforts over the initial ten year era of the lease as reflected in his foreword to Mr. Soeren Hofdhal's "Agricultural Production at Mt. Lezard Estate 1986-1997" where he (Sir John) declared (in part) that:

> "Since their [River Doree Holdings] involvement in the development of the estates, not only has decline in the estates been arrested, but a complete transformation has taken place. Modern technology such as irrigation has been introduced and new crops for both export and the local market have been developed, providing a thrust in the Government's plans for agricultural diversification.
>
> "In brief, an area which for over twenty years was in economic decline has been given a new lease of life and agriculture in the area has been given a substantial boost."

And this in my view substantially accords with the expert Francis Leonce's own assessment which the Court accepts as credible and balanced and consequently calls into question the defendant Government's bona fides in compulsorily acquiring the remainder of the subject lands for a public purpose.

[345] But then notwithstanding all of this the gravamen of this case is whether as at 10th January 1997 the claimant had satisfactory fulfilled the objectives of the Development Programme as specified in Schedule 6 of the Deed of Lease entered into between the parties on 20th February 1987. In my considered opinion the answer is plainly no. And as Francis Leonce aptly puts it – all of the objectives were not met to the extent expected partly due to unverified assumptions.

[346] As the evidence shows this initially stemmed from the fact that from the inception the River Doree lands which comprised the leasehold agreement had not been surveyed and were stated in the agreement between the parties to consist of 1,337 acres of which 820 acres were targeted for full time production by the end of 1991 and 300 acres of which were to be allocated to small farmers.

[347] As it turned out there were not 1,337 acres of Leased Premises but 200 acres less of which fact management of the claimant alleged that Sir John Compton (the then

Prime Minister) was apprised. This would inevitably have impacted negatively on the projected crop production as the available arable land would as a result have been reduced. Besides which over 183 acres of more land than was originally stipulated in the programme were sold as farm and house lots at the request of Sir John in keeping with Government's desire to empower the people by land ownership.

[348] The evidence further revealed and the court accepts that in order to offset the shortfall in total acreage the claimant withheld an amount from one of the basic rent payments. In the light of the shortfall of available arable land it would inevitably have been impossible to achieve the projected tree crops stipulated in the Development Programme.

[349] It was recognized from the outset that with a project of that magnitude, modifications and adjustments would be required from time to time some mutually agreed upon by the parties and others in which one of the parties would inferentially be taken to have acquiesced. After all the terms and conditions of the lease were not cast in stone.

[350] In the opinion of Mr. Francis Leonce while the stated objectives of the Development Programme were not fully realized, the deviations from stipulations in the Development Programme were in large measure agronomically and commercially justifiable given the circumstances. All the agricultural stipulations of the Programme could not have been achieved as indicated in the Lease Agreement he contended. That in large measure is in my opinion a fair and reasonable conclusion.

[351] Once the realities of the implementation became apparent the claimant took such steps as it considered necessary and made appropriate adjustments to realize what was in fact achieved.

[352] The shortfall from banana and pineapple production and the sale of lands hindered the development programme and land tenure constraints prevented the

company (RDH) from accessing credit for continuation of the development programme as envisaged.

[353] In order to address these challenges and better exploit the production capacity of the arable soils, management introduced the production of annual crops such as vegetables, hot peppers, sweet potatoes etc. together with the application of drip irrigation and other appropriate technologies. And whilst these have been profitable revenues proved to be insufficient to meet the requirements of the Development Programme.

[354] The hot pepper production for overseas export had been particularly successful and entailed marketing of supplies for hundreds of farmers from other districts islandwide coordinated by management of River Doree Holdings. In addition the hot pepper programme with associated rotation served as opportunities for agricultural diversification.

[355] It is widely recognized that agriculture is a capital intensive industry and River Doree had initially made significant investment in infrastructural work and the purchase of equipment, the survey of plots etc. at the inception of the lease. Cash flow problems loomed from the outset on account of slow sales of plots and bureaucratic delays. Export crops faced fierce competition from larger producers with greater output, cheaper labour and freight charges. Climatic hazards – drought and storms and the vagaries of pest infestation as well as the fluctuation of market prices both local and export had to be contended with.

[356] Many of the underlying assumptions of the Lease Agreement had not been verified and were without merit. Thus River Doree proceeded on what could be done given the realities of the situation especially its lack of liquidity and inaccessibility to credit facilities. The dominant revenue earners – bananas and pineapple did not sustain the necessary cash flow levels to further the objectives of the Development Programme. There always appeared to be a need for substantial injection of funds from other sources as bananas was not sufficiently productive due to unsuitable lands and pineapples in the initial stages proved most

expensive. The net effect was that the project drew heavily on investment funding and underperformed in income generation.

[357] I pause at this juncture to ask what was the claimant's aim or purpose in obtaining a loan of US$900,000.00 from Barclays Plc in 1988 so as to liquidate the basic rent of the River Doree lands five years ahead of schedule? An obvious advantage is the resultant saving in the payment of interest on the basic rent over the ensuing five years.

[358] Secondly, having thus paid the equivalent of "the outright purchase price" of the lands the claimant was satisfied that on the expiration of the tenth year of the lease it would be permitted by the Government to purchase the remainder of the lands and buildings then in its possession in accordance with sub-clause 9(9) of the Lease Agreement having satisfactorily carried out the terms and conditions thereof including the Development Programme for the sum of EC$10.00 and that Government would grant to it a licence under the Aliens (Landholding Regulation) Laws of St. Lucia to hold as owner.

[359] The claimant thus felt that it had thereby acquired a firm and irrevocable grasp to ownership of the River Doree lands as it envisaged no difficulty in carrying out the terms and conditions of the lease including the Development Programme. This alas turned out to be otherwise.

[360] Firstly banana plant yields and production had dwindled and the market price fell then the export of pineapple to the UK which had flourished for some time ceased altogether on account of the pink mealy bug infestation. Severe financial losses followed. Exports to some of the neighbouring islands eventually also ceased as a result of quarantine measures imposed because of the white mealy bug. The domestic market could not absorb the surplus production. This led to further financial loss. Lack of funding became a key obstacle to recovery of production. Pineapple production was subsequently discontinued altogether.

[361] Hence the need arose for the introduction of annual crops such as vegetables , hot peppers etc. together with the application of drip irrigation and other appropriate technologies which although profitable, revenues derived proved to be insufficient to meet the requirements of the Development Programme. Critical benefits for agricultural diversification in St. Lucia were nevertheless achieved.

[362] In the light of the foregoing it is not by any means surprising that by the date (10th January 1997) on which River Doree gave notice to Government of its desire to exercise its option to purchase the subject lands and buildings then in its possession in keeping with sub-clause 9(9) of the Lease Agreement, it had certainly not met all the objectives of the Development Programme as set out in Schedule 6 of the Lease Agreement entered into between the parties and dated 20th February 1987 which was a prerequisite for the valid and legally effectual exercise of the option to purchase.

[363] And whilst failure to satisfactorily carry out the terms and conditions of the Lease Agreement including the Development Programme may have been partly due to unverified assumptions and other factors beyond the control of River Doree Holdings the preponderance of the evidence points to the fact that River Doree was practically throughout this venture undercapitalized.

[364] From the very outset River Doree's avowed aim was to acquire ownership of the River Doree lands. Initial efforts to secure an outright purchase from the original owners were thwarted by Government itself purchasing the said lands at the agreed outright purchase price (US$1.4 million) and granting a 50-year lease to River Doree with an option to purchase on the expiration of ten years for a nominal price of EC$10.00 provided the Lessee (River Doree) satisfactorily carried out the terms and conditions of the Lease Agreement including the objectives/targets of a Development Programme.

[365] The basic rent was to be paid in seven yearly instalments. This was in fact achieved five years ahead of schedule in October 1988 by means of a Barclays

Plc loan of US$900,000.00 with the leased lands put up as security with the permission of Government.

[366] From that point the claimant felt that it effectively had "a vested right" to the River Doree lands bar payment of the purchase price of EC$10.00, execution of a Deed of Sale, the grant by Government of an Alien's Licence and payment of notarial fees etc. For management was satisfied and convinced that it would have had no difficulty in satisfactorily carrying out the terms and conditions of the Lease including the Development Programme in keeping with sub-clause 9(9) thereof. Indeed the evidence shows that River Doree in fact assisted in formulating the Development Programme so that the claimant was veritably shocked and appalled by the defendant Government's initial tardiness and eventual refusal to execute transfer of the River Doree lands to them and grant the requisite Alien's licence in keeping with sub-clause 9(9) of the Lease Agreement.

[367] On giving notice to Government on 10th January 1997 of its desire to exercise the option to purchase the absolute ownership of the subject lands River Doree needed a substantial cash injection in order to continue the Development Programme. It lacked liquidity, was apparently insolvent and also unprofitable. It is reasonable to surmise that it was at the time heavily committed to Barclays Bank Plc.

[368] Efforts to secure further credit facilities from that bank proved futile as with other development banks which required freehold collateral that River Doree Holdings did not possess and which management had always hoped for but had never in fact achieved with Government maintaining that it had breached its obligations under the lease by failure to satisfactorily carry out its terms and conditions and in particular to meet the objectives of the Development Programme. It was not therefore entitled to exercise its option to purchase the freehold interest in the River Doree lands as claimed.

[369] The claimant does not in my view seriously dispute its failure to perform the Lease Agreement to the letter but challenges a finding that it did not satisfactorily discharge its obligations under the Lease and the Development Programme.

[370] Given the specificity of the obligations/objectives of the parties the claimant is quite incapable as I see it from allowing part performance or alternative performance as a substitute for **satisfactory performance or to maintain that it has wholly or substantially done so.** (My emphasis).

[371] As learned counsel for the defendant helpfully pointed out Halsbury's 4th edition at paragraph 472 defines performance as:

> "The basic rule is that a promisor must perform exactly what he undertook to do and the question whether what has been done amounts to exact performance is a question in each case of the construction of the terms of the contract. The promisor is not entitled to substitute for what he has promised something else which is equally advantageous to the promisee. The parties may by express agreement or waiver substitute a different mode of performance for that originally agreed on."

[372] The evidence clearly shows that the expectations of the lease and the results anticipated by Government were not achieved. And whilst it is true that in some respects Government had certainly by express agreement acquiesced in certain changes in the terms of the agreement (e.g. by making more land available for purchase/sale by small holders and peasants than was originally stipulated) or substitution of a different mode of performance for that originally agreed (e.g. expansion of cocoa cultivation in lieu of coffee) there was no agreement to the fundamental and radical changes in development which the claimant embarked upon when confronted by the challenges and fiscal exigencies which subsequently arose.

[373] This must not in any way be taken to detract from the critical benefits achieved by the claimant for agricultural diversification in St. Lucia as well as the introduction of the production of annual crops such as vegetables, hot peppers, melons etc. together with the application of drip irrigation and other appropriate technologies.

And whilst they had been profitable revenues had not been sufficient to meet the requirements of the Development Programme. Therein lies the rub.

[374] As the evidence discloses River Doree Holdings Limited from the very outset sought the outright purchase of the River Doree lands and buildings from its existing owner Mr. Eric Lawaetz but Government agreed instead to purchase the estates and lease them to River Doree Holdings Limited for a period of fifty years and provided River Doree Holdings (RDH) paid the cost of the acquisition, with an option for renewal for a further twenty-five years should all obligations under the Lease be satisfactorily discharged.

[375] Once RDH satisfactorily carried out the agreed Development Programme they would after a period of ten years be permitted to exercise the option to purchase the said estates or such part thereof as mutually agreed for the sum of EC$10.00 and they would be granted an Alien's Landholding Licence for that purpose. It is on that premise that the Lease Agreement was basically formulated and was understood to have been formulated.

[376] Viewed in the round as I see it, when therefore the claimant failed within the time specified "to deliver the deliverables" (as promised) to coin the claimant's very own phraseology it could not be taken to have satisfactorily carried out the terms and conditions of the Lease or the development programme and would not accordingly be entitled to exercise the option to purchase the River Doree lands as per sub-clause 9(9) of the Lease since satisfactory performance of the development programme was a prerequisite to so do.

[377] Following the failure of banana and pineapple production - the dominant revenue earners - for reasons which have been stated earlier, efforts at a resurgence proved unsuccessful because of serious losses which had been incurred, lack of liquidity and inaccessibility to credit facilities as a result of the existing impasse regarding the tenure situation between the parties. The odds were clearly formidable and consequently frustrated furtherance of the development programme as set out in Schedule 6 of the Lease.

[378] The claimant had earlier alluded to the fact that Government never sought to curtail the cultivation of crops which were not part of the development programme nor did it intervene at any stage prior to the ten year review to compel compliance with the development programme.

[379] The fact of the matter is that the Lease and Development Programme did not lock the claimant into only producing crops under the development programme. Production of other crops did not relieve or waive the obligations of the claimant under the development programme as exemplified in **Taylor Fashions Ltd. v Liverpool Victoria Trustees Co. Ltd**[6] where the Court held that the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine of estoppel.

[380] In the light of the more recent cases the principle "requires a very much broader approach which is directed rather at ascertaining whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment than to enquiring whether the circumstances can be fitted within the confines of some preconceived formula serving as a universal yardstick of unconscionable behaviour."

[381] A party who seeks to set up an estoppel whether proprietary by acquiescence or encouragement must establish that it would be unconscionable for the other party to be permitted to deny what he has allowed or encouraged the first party to assume to his detriment.

[382] This was a 50-year lease with an option to purchase after 10 years at and around which a performance assessment/evaluation was carried out. Government's inactivity in the interim could not in the circumstances be perceived or construed as being tantamount to acquiescence as counsel for the defendant submitted and with which I fully agree.

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[6] 1982 QB 133

[383] In the result I hold that on a balance of probabilities the questions posed in paragraph 308 herein should be answered thus:

(i) That River Doree Holdings Limited (the Lessee) did not satisfactorily fulfil the terms and conditions of the Deed of Lease including specifically its obligations in respect of the Development Programme as per Clause 9(9) of the Lease.

(ii) That any failure or non-compliance on the claimant's part to so do was although generally speaking with the knowledge of the Government of St. Lucia was seldom with its acquiescence (e.g. the sale of plots beyond that which was stipulated in Schedule 6 of the Lease; and planting of bananas and cocoa in place of coffee. (Exhibits SH17 and 18 refer.)

(iii) The variations in the execution of the obligations by River Doree Holdings alluded to in sub paragraph (ii) certainly had the approval/sanction of the Government of St. Lucia and in the case of sale of lands beyond the stipulated acreage was in actual fact encouraged by Prime Minister Compton and implemented by River Doree by way of cooperation with Government.

(iv) Owing to the acute liquidity situation of River Doree Holdings when management applied to exercise the option to purchase the absolute ownership of the lands and buildings then subject to the Lease, it could be argued that the prolonged delay in obtaining a positive response from Government in that regard placed River Doree in grave jeopardy by hindering furtherance of the developmental programme or any developmental plans for that matter including the discharge or fulfilment by River Doree of its obligations under the Lease.

But then the evidence shows and this is not disputed that the shortfalls from banana and pineapple production and sale of lands hampered the Development Programme because of the restricted cash flow and a number of objectives of the Development Programme were not met as a result. In sum, a number of circumstances conspired to prevent or hinder the discharge or fulfilment by River Doree of its obligations under the

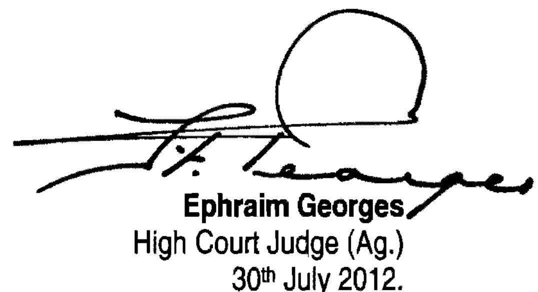
Lease which cannot in my considered view be truly attributed to the acts or omissions of the Government.

(v) The answer here is plainly no. There was no obligation on the part of Government (the Lessor) to complain or object to anything done by River Doree during the operative period of the Lease. The onus surely lay on the claimant (Lessee) to fulfil the obligations of the Development Programme as set out in Schedule 6 of the Lease Agreement on the satisfactory execution of which it would after the tenth year of the term created be entitled on giving notice in writing to the Government (Lessor) of its desire to purchase the absolute ownership of the lands and buildings then subject to the Lease. This would not I hasten to add ipso facto constitute the defendant trustee of the subject lands as claimant counsel advocated.

[384] In the result the claimant's action is dismissed and the Court accordingly holds that River Doree Holdings Limited is not entitled to the declarations sought in paragraphs 1, 2 and 3 of the prayer of the statement of claim and they are accordingly refused. The claimant's claim for damages against the defendant for breach of the terms and conditions contained in the Deed of Lease between them dated 20th February 1987 is likewise dismissed. Costs to the defendant to be prescribed costs in accordance with Rule 65.5(1) of the **Civil Procedure Rules 2000.**

In light of all the circumstances it is in my view meet that the defendant's counterclaim should be struck out with no order as to costs.

Order accordingly.



Ephraim Georges
High Court Judge (Ag.)
30th July 2012.