THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2022/0474

BETWEEN:

MICHAEL BARRY AS LAWFUL ATTORNEY OF JOHN HUGHES

Claimant

and

FLAT POINT DEVELOPMENT LIMITED

Defendant

Appearances:

Mr. Hugh Marshall Jr, Ms. Kema Benjamin and Mr. Johnathan Marshall of counsel for the Claimant

Dr. David Dorsett of counsel for the Defendant

2025: July 11th

2026: June 26th

DECISION

[1] **DRYSDALE, J.:** This is a Fixed Date Claim brought by the Claimant, Mr. John Hughes, against the Defendant, Flat Point Development Limited seeking inter alia a declaration that the Defendant holds the properties on trust for him, an order for their transfer into his name, possession, and ancillary relief, including damages and costs.

BACKGROUND

[2] The Defendant is a property developer and the owner of a residential community known as Emerald Cove situated in the eastern part of the island of Antigua past the village of Willikies. The development is located on lands registered in the Land Registry as Registration Section: St. Phillips North Block 25 3288A.

[3] The properties which form the subject of these proceedings are certain condominium units within the Emerald Cove development namely:

(1) Block D4-03, comprising six apartments;

(2) Block D1-25, comprising six apartments; and

(3) Block D4-02, comprising apartments A, B and C only,

for a total of fifteen condominium units.

[4] These properties are more particularly identified in the Land Registry under the Condominium Titles Act as follows: Registration Section: St. Phillips North, Block: 25 3288A Parcels and Lots**:** Parcel 234, Lot 57, Parcel 235, Lot 58, Parcel 236, Lot 59, Parcel 237, Lot 51, Parcel 238, Lot 52, Parcel 239, Lot 53, Parcel 249, Lot 31, Parcel 248, Lot 32, Parcel 247, Lot 33, Parcel 246, Lot 25, Parcel 245, Lot 26, Parcel 244, Lot 27.

[5] It is common ground that the parties entered into a written agreement dated 15th March 2006 pursuant to which the Claimant agreed to purchase and the Defendant agreed to sell certain condominium properties within the Emerald Cove development. At the time of that agreement the properties had not yet been constructed.

[6] The Defendant's case is that under the agreement of 15th March 2006 the Claimant agreed to purchase condominium blocks namely Blocks D3-01, D4-02, D1-24 and D1-25 for a total purchase price of US$14 million dollars with a closing date of 31st March 2007. The Defendant also posits that it was a clear term of the agreement that the Claimant would apply for and obtain a Non-Citizen Land Holding Licence.

[7] The Claimant's case is that the agreement of 15th March 2006 was for the purchase of 15 condominium units at a cost of US$9.8 million dollars and that the Defendant agreed to build and supply those units but failed to do so.

[8] It is not disputed that the Claimant made payments to the Defendant totaling US$9.8 million dollars comprising payments made under an earlier agreement in 2005 and further payments made pursuant to the 2006 agreement. The Defendant by correspondence dated 17th February 2013 acknowledges receipt of the sum of US$9.8 million dollars.

[9] The Defendant's position is that the Claimant failed to pay the full purchase price of US$14 million dollars under the 2006 agreement. More particularly that the last payment was made in or about September 2007 resulting in the Claimant being in breach of that agreement.

[10] The Claimant contends that due to the Defendant's failure to fulfil its obligations under the 2006 agreement the parties entered into a further arrangement on or about 20th January 2010. Pursuant to that agreement the Defendant agreed to refund all sums paid by the Claimant in the total amount of US$9.8 million dollars as reflected in a written memorandum with the refund originally scheduled to be made on or before 30th April 2010 and later postponed to 30th June 2010.

[11] The Claimant further asserts that on or about 15th April 2011 the Defendant proposed that in satisfaction of the sums paid the Claimant accept legal and equitable title to Block D4-03 (six apartments), Block D1-25 (six apartments) and Block D4-02 (apartments A, B and C only) and that the Claimant accepted this proposal by email on or about the same date.

[12] The Defendant denies that any binding agreement was concluded in 2010 or 2011 and maintains that all such communications amounted only to negotiations which never resulted in any concluded contract, variation, or superseding agreement.

[13] It is common ground that to date the properties remain registered in the name of the Defendant. Moreover no transfer of title was ever completed in favour of the Claimant, nor did the Claimant ever take possession of the units. The Claimant contends that the Defendant holds the properties on trust for him and that he is the beneficial owner thereof. The Defendant denies the existence of any trust whether express, resulting, or constructive, and asserts that it has never held the properties or any funds on trust for the Claimant.

[14] The Defendant further relies on the doctrines of breach, laches, and limitation, and pleads that the Claimant's claims are statute-barred under the Limitation Act 1997. The Claimant denies any delay or statutory bar and maintains that the Defendant as a bare trustee cannot rely on such defences.

ISSUES

[15] The resolution of this case is dependent on the following issues:

a. Whether the Sale Agreement dated 15th March 2006 continues to govern the legal relationship between the parties, or whether that agreement was superseded by a subsequent binding agreement.
b. Whether either party was in breach of the Sale Agreement dated 15th March 2006.
c. Whether the Claimant acquired a beneficial or equitable interest in any of the disputed condominium units resulting in the Defendant holding any such property on trust for the Claimant.
d. Whether the Claimant's claims are barred by limitation, laches or delay.

LAW AND ANALYSIS

Whether the Sale Agreement dated 15th March 2006 continues to govern the legal relationship between the parties or whether that agreement was superseded by a subsequent binding agreement.

[16] The first issue for determination is whether the Sale Agreement dated 15th March 2006 continued to govern the parties' relationship or whether it was displaced by a subsequent binding agreement. The legal principles applicable to this issue are relatively straightforward. Once a contract has been validly formed it remains in force unless the parties later agree by way of a legally binding arrangement to rescind or replace it. The existence of such an intention falls to be determined from the parties' words, conduct, and the surrounding circumstances.

[17] In **Sookraj (Jagdeo) v Samaroo (Buddhu)**[1]**,** the Privy Council confirmed that where parties enter into a subsequent arrangement concerning the same subject matter, the Court must determine whether the later agreement was intended merely to vary the original contract or whether it was intended to replace it altogether. In approving the decision in **United Dominions Corporation (Jamaica) Ltd v Shoucair**[2], their Lordships reiterated the principle that "if the new agreement reveals an intention to rescind the old, the old goes and if it does not, the old remains in force and unamended."

[1] [2004] UKPC 50
[2] (1968) 12 WIR 510

[18] Equally well established is the principle that negotiations, proposals, and draft agreements do not constitute a binding contract unless the parties have reached agreement on all material terms and objectively demonstrated an intention to create legal relations. As the United Kingdom Supreme Court observed in **RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH**[3], the Court is concerned not with the parties' subjective beliefs but with whether when viewed objectively their words and conduct demonstrate a concluded agreement.

[19] Against that legal background the Court turns to the evidence. There is no dispute that the parties entered into a written Sale Agreement dated 15th March 2006. That agreement provided a comprehensive contractual framework governing the sale of condominium blocks within the Emerald Cove Development, the purchase price, the obtaining of a Non-Citizen Land Holding Licence, completion, and transfer of title.

[20] Although the transaction contemplated by the agreement was never completed the mere fact of non-performance does not establish that the agreement ceased to exist. The Court must therefore determine whether any subsequent dealings displaced it.

[21] The first arrangement relied upon is the proposed amendment circulated in July 2009. That document contemplated a revised transaction involving fewer units and a reduced purchase price. However it is common ground that the document was never executed by either party.

[22] More significantly the contemporaneous correspondence demonstrates that both parties regarded the proposed amendment as requiring further approval and formal execution before it could take effect. The communications expressly acknowledge that the renunciation of the existing agreement and the execution of a replacement agreement had not yet occurred.

[23] On the evidence as a whole the July 2009 document amounted to no more than a proposal for restructuring the parties' relationship. It did not constitute a binding agreement and therefore could not operate to rescind or supersede the Sale Agreement dated 15th March 2006.

[3] [2010] UKSC 14

[24] The Court reaches a similar conclusion in relation to the extensive email correspondence exchanged between 2008 and 2009. Those communications reveal ongoing commercial discussions concerning revised pricing, alternative combinations of units, financing arrangements, and approval by the Defendant's bankers.

[25] Throughout those discussions the parties repeatedly contemplated further documentation and approvals before any revised arrangement could be implemented. The correspondence is therefore characteristic of negotiations rather than contractual finality. The Court is accordingly unable to conclude that the correspondence between 2008 and 2009 resulted in any binding agreement capable of replacing the 2006 Sale Agreement.

[26] The next matter requiring consideration is the agreement dated 20th January 2010. Unlike the earlier proposals this agreement was executed by both parties. Under its terms the Defendant undertook to repay the sum of US$9.8 million dollars previously paid by the Claimant and his co-investors together with the transfer of a residential property within the development.

[27] However the agreement was expressly stated to be subject to the Defendant securing financing from SIMEST or another financial institution. The securing of such financing was therefore a condition precedent to the operation of the agreement.

[28] The evidence does not establish that this condition was ever satisfied. In **Aberfoyle Plantations Ltd v Khaw Bian Cheng**[4], the Privy Council made clear that where an agreement is expressly contingent upon the occurrence of a specified event the agreement does not take effect unless and until that event occurs.

[29] In the present case the financing contemplated by the January 2010 agreement was never secured. Accordingly, the agreement never became effective under its own provisions and could not displace or supersede the Sale Agreement dated 15th March 2006.

[30] The Claimant nevertheless submits that a new agreement was subsequently concluded through the email correspondence exchanged in April 2011. The Court accepts that those communications demonstrate a genuine attempt by the parties to resolve the difficulties

[4] [1960] A.C. 115

which had arisen under the original transaction. However the correspondence does not reveal contractual finality.

[31] The Defendant repeatedly referred to its “proposal”, indicated that it was seeking to “finalise a new contract”, and expressly contemplated the preparation of further documentation. The correspondence also reveals that important matters remained outstanding, including taxes, legal fees, approval from purchasers, and the structure by which title would ultimately be transferred.

[32] Equally significant is the Claimant’s response of 19th April 2011 in which he indicated that he was still consulting with prospective purchasers and sought clarification regarding several material matters. That response is inconsistent with the existence of a concluded agreement.

[33] When viewed objectively and in its proper commercial context, the April 2011 correspondence reflects continuing negotiations rather than offer and acceptance giving rise to a binding contract. This conclusion is reinforced by the parties’ subsequent correspondence in December 2011, which demonstrates that proposals remained under consideration and that additional approvals were still being sought. Such conduct is inconsistent with the existence of a concluded agreement reached several months earlier.

[34] Drawing these matters together the Court is satisfied that none of the arrangements relied upon by the Claimant displaced the Sale Agreement dated 15th March 2006. The January 2010 agreement likewise failed to take effect because the condition precedent was never satisfied. As such the parties' subsequent correspondence remained at the stage of negotiation.

Disposition

[35] For the foregoing reasons, the Court finds that the Sale Agreement dated 15th March 2006 remained the agreement governing the parties’ relationship at all material times and was not rescinded, superseded, or replaced by the proposed amendment of 2009, the January 2010 repayment agreement, or the subsequent negotiations and correspondence exchanged between the parties. The parties’ respective rights and obligations must therefore be determined by reference to the 2006 Sale Agreement and the Court accordingly turns to

consider whether either party established a breach of that agreement and the legal consequences flowing therefrom.

ISSUE 2: Whether either party was in breach of the Sale Agreement dated 15th March 2006.

[36] Having determined that the Sale Agreement dated 15th March 2006 remained the effective agreement governing the parties' relationship, the Court next considers whether either party failed to perform its obligations under that agreement and if so the legal consequences of such failure.

[37] This issue arises principally from the Defendant's contention that the Claimant failed to complete the transaction in accordance with the agreement. The Defendant submits that the agreed purchase price was US$14.7 million dollars and that only US$9.8 million was paid thereby constituting a breach of contract.

[38] The Claimant disputes that contention. He argues that the agreement contemplated a structured completion process involving the provision of information by the Defendant, the application for a Non-Citizen Land Holding Licence, and the ultimate transfer of title. The Claimant submits that the obligations necessary to bring the transaction to completion never crystallised. Accordingly he contends that the Defendant cannot treat the failure to pay the balance of the purchase price without more as a breach of the agreement.

[39] The Court accepts that the issue cannot be determined solely by reference to the unpaid balance of the purchase price. The obligations imposed by the agreement were reciprocal and interdependent. The question is not simply whether the balance remained unpaid but whether the contractual conditions giving rise to the obligation to complete had themselves arisen.

[40] Under the Sale Agreement completion was expressly linked to the issuance of a Non-Citizen Land Holding Licence and the transfer of title. Clause 2(b) further contemplated that the Purchaser's obligation to apply for the licence would arise either within thirty days of execution of the agreement or within thirty days of the Vendor providing the legal description of the property whichever occurred later. The agreement did not place responsibility for

completion on one party alone. Rather it required both parties to take the steps necessary to complete the transaction.

[41] The Defendant argues that the Claimant's failure to pay the balance of the purchase price constituted a clear breach of contract. However the Court must assess that contention against the factual circumstances which followed the execution of the agreement.

[42] The evidence demonstrates that the transaction did not proceed in accordance with the original contractual timetable. The condominium registration process was not completed within the period originally contemplated and the licence application process never progressed to completion.

[43] The contemporaneous correspondence is instructive. In correspondence dated June 2009 reference is made to the parties still awaiting information necessary to proceed with the Non-Citizen Land Holding Licence process. That correspondence shows that more than two years after the contractual completion date the parties were still not in a position to complete the transaction in the manner contemplated by the agreement.

[44] The Court further notes that the Defendant did not treat the Claimant as being in repudiatory breach of the agreement. Instead the parties continued for several years to explore alternative commercial arrangements. These discussions included proposals to reduce the number of units to be transferred, alter the purchase price, repay monies already advanced, and substitute alternative properties.

[45] While the Court has found under Issue 1 that these discussions did not result in a binding agreement capable of superseding the 2006 Sale Agreement they remain relevant in assessing the parties' conduct. They demonstrate that neither party was insisting upon strict performance of the original completion timetable and that both parties recognised that the transaction had departed substantially from the framework originally contemplated.

[46] The January 2010 repayment agreement is particularly significant. Although the Court has found that the agreement never became effective because the condition precedent was not satisfied, it nevertheless demonstrates that the Defendant was not then proceeding on the basis that the Claimant's alleged default entitled it to retain the monies paid whilst treating the agreement as terminated. Similarly the negotiations which continued throughout 2011

are inconsistent with the proposition that either party regarded the original agreement as having been brought to an end by the unilateral default of the other.

[47] In those circumstances the Court is not persuaded that the Defendant has established that the Claimant committed a breach of the agreement by failing to pay the balance of the purchase price. The Defendant has not shown that the conditions necessary for completion had arisen or that it was itself in a position to require the Claimant to complete the transaction in accordance with the agreement.

[48] Further the Court does not consider that the evidence supports a finding that the Defendant alone was responsible for the failure of the transaction. The Claimant has not pursued a claim for damages arising from breach of the 2006 Sale Agreement and has not sought relief founded upon any specific breach of that agreement.

[49] The Court notes that the Defendant's allegation of breach rests substantially upon the Claimant's failure to obtain a Non-Citizen Land Holding Licence. However, the Defendant failed to establish that the contractual prerequisites necessary to trigger that obligation including the provision of the legal description contemplated by clause 2(b) of the Agreement, had arisen. In those circumstances, the Court is unable to conclude that the Claimant's failure to obtain the licence constituted a breach of the Agreement.

Disposition

[50] For the reasons set out above the Court is not satisfied that the Defendant has established that the Claimant was in breach of the Sale Agreement dated 15th March 2006 by reason of his failure to pay the balance of the purchase price. The Court therefore rejects the Defendant's contention that the Claimant's alleged default defeats his claim. However the resolution of that issue does not determine whether the Claimant acquired any proprietary or equitable interest in the disputed properties to which question the Court now turns.

ISSUE 3: Whether the Claimant acquired a beneficial or equitable interest in any of the disputed condominium units resulting in the Defendant holding those properties on trust for the Claimant

[51] Having found that the Sale Agreement dated 15th March 2006 remained the agreement governing the parties' relationship and that neither party has established a breach entitling it

to contractual relief, the Court turns to the central issue in this case being whether the Claimant acquired any beneficial or equitable interest in the condominium units sufficient to support the declarations and proprietary remedies sought.

[52] The Claimant's primary contention is that notwithstanding the absence of a formal transfer of title the Defendant holds the subject units on trust for him. The Claimant relies principally upon the substantial payments made to the Defendant, the subsequent negotiations concerning the allocation of specific units, and the Defendant's acknowledgement that it received the sum of US$9.8 million dollars.

[53] The Defendant disputes the existence of any trust. It contends that the parties' relationship remained entirely contractual and that no proprietary interest was ever transferred to the Claimant. The Defendant further contends that the Claimant's remedy if any is against the Defendant personally for any contractual rights that may have been breached. It does not lie in asserting a proprietary claim to particular units within the development.

[54] The Court agrees with the Defendant. It is well established that the existence of a contract for the sale of land does not automatically give rise to a trust in favour of a purchaser. Equity will recognize a beneficial interest where there exists a specifically enforceable contract under which the purchaser has become entitled in equity to the property. The principle is commonly associated with the decision in **Lysaght v Edwards**[5] where it was held that once a valid and specifically enforceable contract for sale exists equity regards that which ought to be done as done and treats the purchaser as beneficial owner.

[55] However that principle presupposes the existence of a concluded and specifically enforceable agreement relating to the property claimed. The doctrine does not apply merely because monies have been paid pursuant to negotiations or pursuant to a contractual relationship which has failed to proceed to completion.

[56] In the present case the Court has already found that the parties' rights continued to be governed by the Sale Agreement dated 15th March 2006. Under that agreement, the

[5] 2 Ch D 499, 506, 510, Sir George Jessel MR

Claimant contracted to purchase condominium blocks within the Emerald Cove Development for the agreed purchase price of US$14.7 million dollars.

[57] It is common ground that the transaction contemplated by that agreement was never completed. The balance of the purchase price was never paid, legal title was never transferred to the Claimant. More importantly, the specific condominium units now claimed by the Claimant were not the subject of the 2006 Sale Agreement. Rather, they emerged as part of later attempts by the parties to restructure their commercial relationship after the original transaction had failed to proceed as contemplated.

[58] The Court has already found under Issue 1 that neither the July 2009 proposals, the January 2010 repayment agreement, nor the April 2011 correspondence resulted in a binding agreement capable of superseding the 2006 Sale Agreement. That finding is fatal to the Claimant's proprietary claim. The specific units now sought by the Claimant derive from arrangements which the Court has already found never crystallized into a concluded and enforceable agreement. In the absence of such an agreement there is no legal basis upon which equity could regard the Defendant as having become a trustee of those units for the Claimant.

[59] The Claimant also relies upon the fact that the Defendant received and retained the sum of US$9.8 million dollars. While the Court accepts that those monies were paid and retained that fact alone does not create either a resulting trust or a constructive trust over the properties.

[60] In **Westdeutsche Landesbank Girozentrale v Islington London Borough Council**[6], Lord Browne-Wilkinson explained that a resulting trust arises where property is transferred in circumstances demonstrating that the beneficial interest was not intended to pass to the recipient. The doctrine is concerned with beneficial ownership of the property transferred.

[61] Here the monies were paid pursuant to a contractual arrangement under which the parties intended the Defendant to receive and apply those funds in accordance with the parties' commercial agreement. The payments were not made into a segregated trust account nor

[6] [1996] AC 669

were they transferred for a limited purpose giving rise to a resulting trust over the condominium units.

[62] Similarly, the Court finds no basis for the imposition of a constructive trust. A constructive trust ordinarily arises where it would be unconscionable for the legal owner to deny another person's beneficial interest in property. The authorities demonstrate that such trusts require more than a failed commercial transaction or an unpaid debt. There must be circumstances which give rise to a proprietary interest such that it would be unconscionable for the legal owner to deny it.

[63] In the present case the evidence establishes no common intention between the parties that the specific units now claimed would be held on trust for the Claimant pending transfer. To the contrary the evidence demonstrates years of ongoing negotiations concerning which units might ultimately be transferred and upon what terms. Those negotiations never resulted in a concluded agreement. The Defendant therefore remained the legal and beneficial owner of the units and continued to deal with them in that capacity.

[64] The Court also considers it significant that the units remained registered in the Defendant's name at all material times, that no instruments of transfer were executed in favour of the Claimant, and that the Claimant never entered into possession of the properties.These factors are not individually determinative. However, when viewed collectively, they reinforce the conclusion that the Claimant never acquired a proprietary interest in the units themselves.

[65] At its highest the evidence demonstrates that the Claimant paid substantial sums pursuant to a contractual arrangement which ultimately failed to achieve completion. Such circumstances may give rise to personal remedies. They do not without more establish beneficial ownership of specific properties.

[66] The distinction between a personal claim and a proprietary claim is critical. A person who advances monies under a contract which is not completed does not thereby become the beneficial owner of the other party's assets. Unless equity recognises a trust or other proprietary interest, the remedy remains personal rather than proprietary.

[67] The Court accepts that in appropriate circumstances a purchaser under a specifically enforceable contract for the sale of land may acquire an equitable interest pending completion. However any such interest remains dependent upon the continued enforceability of the contractual arrangement and does not arise merely because monies have been paid. In the present case the transaction contemplated by the 2006 Sale Agreement was never complete and the Claimant has not established any basis upon which the Court could order specific performance of that agreement.

[68] More significantly, the proprietary relief now sought is founded not upon the units identified in the 2006 Sale Agreement but upon units which emerged from the parties' subsequent attempts to restructure their commercial relationship. The Court has already determined under Issue 1 that the proposed amendment of 2009, the January 2010 repayment agreement, and the April 2011 correspondence did not crystallize into a binding agreement capable of superseding the 2006 Sale Agreement. To permit the trust claim to succeed in those circumstances would be to confer proprietary rights based upon negotiations which never matured into a concluded agreement. Equity cannot be used to circumvent the absence of a binding transfer arrangement by re-characterizing unsuccessful negotiations as a trust.

Disposition

[69] Having carefully considered the evidence and the applicable legal principles, the Court is not satisfied that the Claimant has established the existence of an express trust, resulting trust, constructive trust, or any other equitable interest in the condominium units which form the subject matter of these proceedings.

ISSUE 4: Whether the Claimant's claims are barred by limitation laches or delay.

[70] In light of the Court's findings on the preceding issues, it is strictly unnecessary to determine the Defendant's limitation and equitable defences. However, as these matters were fully argued the Court will address them briefly.

[71] The Defendant contends that the Claimant's claims are statute-barred and that in any event the extensive delay in pursuing relief disentitles the Claimant to the equitable remedies sought. The Claimant disputes those contentions and submits that limitation does not apply because the Defendant holds the properties and monies paid on trust for him. Reliance is

placed on section 23(1)(b) of the Limitation Act 1997 which removes limitation periods in certain actions concerning trust property and its proceeds.

[72] The Court has considered the decision of the Court of Appeal in **Gershon Robertson v Baldwin King**[7] in which the Court of Appeal concluded that the defence of laches was held not to be maintainable on the facts of that case. That decision, however, arose in materially different circumstances involving competing proprietary claims under a settlement created by will. The present case involves no such settlement or trust relationship. As this Court has found the Defendant did not hold the disputed condominium units upon trust and the Claimant acquired no equitable proprietary interest capable of specific enforcement. The Court is therefore satisfied that **Gershon** is distinguishable.

[73] Statutory limitation and the equitable doctrines of laches and acquiescence are distinct. While limitation operates by statute, laches is founded upon the principle that equity will not ordinarily grant discretionary relief where, having regard to the claimant's delay and all the surrounding circumstances, it would be inequitable to do so. As Lord Selborne LC explained in **Lindsay Petroleum Co. v Hurd**[8] the doctrine depends upon "the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy." Thus in determining whether the doctrine applies, the Court must consider all the circumstances, including the Claimant's knowledge of the relevant facts, the explanation for any delay, whether the Defendant's position has changed during the period of inaction, and whether the grant of equitable relief would now be unjust.

[74] The evidence establishes that by no later than 2011, the Claimant knew that legal title to the disputed condominium units had not been transferred and that no binding agreement had been concluded for their transfer. Despite that knowledge, these proceedings were not commenced until more than a decade later. Further no satisfactory explanation has been offered for that delay.

[75] The Court accepts that delay alone does not constitute laches. However, where the Claimant seeks discretionary equitable relief after many years of inaction, the Court must consider

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[7] SGVAP2008/0020

[88] (1874) LR 5 PC 221 at 239–240

whether it would now be equitable to intervene. In light of the prolonged and unexplained delay, the absence of any concluded agreement giving rise to an enforceable equitable interest, and the Court's earlier findings that the Defendant remained both the legal and beneficial owner of the disputed units, the Court would not in the exercise of its equitable jurisdiction have granted the proprietary relief sought.

Disposition

[76] Accordingly and in addition to the findings already made on the substantive issues the Court finds that the Claimant cannot rely upon section 23(1)(b) of the Limitation Act 1997 no trust having been established. Further the equitable remedies sought would in any event be barred by the doctrines of laches and delay. The Claimant's claim therefore fails both on its merits and by reason of the equitable defences relied upon by the Defendant.

ORDER

[77] For the reasons given above the court makes the following Orders:

(1) The Claimant's Statement of Case is dismissed.
(2) The Defendant is awarded prescribed costs
(3) Interest

Jan Drysdale
High Court Judge

By the Court

Registrar