

**IN THE SUPREME COURT OF BELIZE A.D. 2016  
(CIVIL)**

**CLAIM NO. 661 of 2016**

**BETWEEN**

**MARION RODRIGUEZ**

**CLAIMANT**

**AND**

**LINSFORD ALTON ALDANA**

**DEFENDANT**

**Before:** The Honourable Madame Justice Griffith.  
**Date of Hearing:** 16<sup>th</sup> February, 2018.  
**Appearances:** Mr. Herbert Panton for the Claimant and Ms. Stacey Grinage, Chebat & Co. for the Defendant.

**DECISION**

***Registered Land – Recovery of Possession – Lease with Option to Purchase – Forfeiture of Lease – Whether Overriding Interest existing – Registered Land Act, Cap. 194 Section 31(1)(g).***

**Introduction**

1. In November, 2016 the Claimant Marian Rodriguez instituted a fixed date claim (subsequently amended in January, 2017), against the Defendant Linsford Aldana for recovery of possession of a parcel of registered land situate in the Belmopan Registration Section, Belize ('the property'). The claim, as amended, also sought removal of a caution entered against the property by the Defendant. The Claimant purchased the property from the Reconstruction and Development Corporation ('Recondev') in September, 2015 and was registered as proprietor on 18<sup>th</sup> September, 2015. The Defendant had been granted a lease of the same property by Recondev, executed in April, 2009 and registered in December, 2010. The execution of the lease (in the prescribed form) had been preceded by an agreement entered into between the Defendant and Recondev in March, 2009 ('the Agreement'). That agreement was entitled 'Lease Agreement with Option to Purchase'.

2. The Defendant's lease was forfeited in September, 2015 – and the forfeiture registered on the same day as the Claimant's transfer. In resisting the claim for recovery of possession, the Defendant asserted firstly that his lease was wrongly forfeited by Reconddev as he had been in compliance with all of its terms and conditions. Further, the Defendant asserted that at the time of the Claimant's purchase of the property he had been in actual occupation of the land and that as his lease agreement granted him an option to purchase the property, he holds an overriding interest in the property pursuant to section 31(1)(g) of the Registered Land Act, Cap. 194 ('the Act'). The Defendant contended therefore that the Claimant purchased the property subject to his overriding interest as lessee. It is noted at this stage, that whereas the Defendant asserted his position in response to the claim, he filed no ancillary claim seeking any relief from the Court and the original proprietors Reconddev were not parties to the Claim. This is the Court's decision and its reasons.

### **Issues**

3. The following issues arise for determination on the claim:-
  - (i) Is an option to purchase capable of subsisting as an overriding interest as provided under section 31(1)(g) of the Act?
  - (ii) Did the Agreement between the Defendant and Reconddev give rise to an option to purchase the property in favour of the Defendant?
  - (iii) Whether giving rise to an overriding interest or not, what is the effect of the Defendant's agreement (if any), on the Claimant's registered ownership of the property.

### **Background**

4. The background of this matter and the evidence filed by both parties are usefully highlighted before proceeding to the determination of the claim. As stated in the introduction above, the claim was commenced in November, 2016 for recovery of possession of land. At the initial first hearing in December, 2016, the Claimant was represented by Counsel but the Defendant appeared unrepresented.

Pursuant to a direction of the Court, the claim was amended in January, 2017 and the first hearing adjourned to February, 2017. Upon the first hearing on the amended claim, the Defendant appeared (still unrepresented) but had not yet been served with the amended claim. The first hearing was once again adjourned, on this occasion to April, 2017 and costs were awarded against the Claimant for non-compliance with certain orders of the Court. By this time the Claimant had filed two affidavits, each in support of the claim and amended claim respectively. The affidavit on the amended claim was in the nature of a further affidavit and as such the Court directed that the Claimant file a single affidavit containing all information in support of her claim. On the adjourned first hearing, which was held in May, 2017, the Defendant appeared now represented by Counsel, who of course requested time to file a response to the Claim.

5. The Defendant was given the time to file a response and the matter adjourned to June, 2017, to be dealt with by way of summary hearing. At the 1<sup>st</sup> hearing in June, 2017, the Defendant appeared with new Counsel who as did the previous counsel, requested time to file a response on behalf of the Defendant. Costs were on this occasion awarded against the Defendant but the opportunity to file his response to the claim was nonetheless provided by the Court. The Defendant was directed to file his affidavit in response to the claim by 14<sup>th</sup> July, 2017; the Defendant was also granted liberty to file an ancillary claim by the same date. The Claimant was given liberty to reply to the Defendant's response to the Claim and subject to the effect of any ancillary claim filed by the Defendant, the matter set for summary hearing on the 29<sup>th</sup> September, 2017. Thereafter, Counsel for the Claimant was not ready to proceed on the 29<sup>th</sup> September, 2017 nor on the adjourned date of the 1<sup>st</sup> November, 2017. On the 1<sup>st</sup> November, 2017 costs were once more awarded against the Claimant and no ancillary claim having been filed, the matter was finally heard summarily on the 16<sup>th</sup> January, 2018.
6. The Claimant's evidence in chief was to the effect that she purchased the property from Reconddev in September, 2015. She was aware at the time of purchase that there had been a lease on the property but that it was forfeited by Reconddev, according to her, for breach of lease.

The Claimant caused a letter to be written to the Defendant in October, 2015 to quit the premises but he did not do so. By further letter in July, 2016 the Claimant again demanded possession of her property but the Defendant refused to move. As a consequence, the Claimant instituted proceedings in the Magistrate's Court for ejectment, but that matter was not heard for want of jurisdiction and she was redirected to pursue her claim (rightfully so), in the Supreme Court. In March, 2016 the Defendant entered a caution against the property which remains to this day. In support of the claim, the Claimant exhibited her transfer from Reconddev; the forfeiture of the Defendant's lease by Reconddev; an extract of the land register with the entry of her proprietorship and the entry of the forfeiture of the Defendant's lease. The Claimant stated and maintained that at the time she purchased the property in September, 2015, she'd inspected the property and there was no house on it, thus she received a lot with vacant possession.

7. The Defendant's response to the claim was that he had been granted a lease for a period of 10 years by Reconddev, at a rent of \$66.01 per month. The lease he says contained an option to purchase the property at a price of \$6,400.49 and that this lease had been registered. Upon signing his option to purchase the Defendant says he paid \$960, as was required by the agreement and that since 2009, he had been in possession and occupation of the land. The Defendant states that Reconddev was at all times given notice of his interest to exercise the option to purchase. In May, 2013 the Defendant states that he went to obtain a loan to finance the purchase of the land and to construct his home. He says that he informed Reconddev that he was obtaining such a loan and was issued with a commitment letter from the Bank in December, 2014. The loan was to be secured by a charge over the property and in February, 2015 he executed a promissory note for the loan. The Defendant states that by the time the Bank was ready to disburse the loan it was discovered that Reconddev had forfeited his lease. The Defendant denied having breached any terms of his lease, stated that he had been in occupation of the lot and had commenced construction of a dwelling house since 2014.

8. The Defendant exhibited his lease agreement with Reconddev, an extract of the land register showing the registration of his lease as well as a letter showing that land taxes were paid up until the year 2015. The Defendant also exhibited the commitment letter (dated December, 2014) from the Bank for the loan he was obtaining, the promissory note for the loan (executed in February, 2015), and 2 photographs depicting what he says was the residence he'd started constructing since sometime in 2014. In cross examination of the Claimant, the main thrust of the Defendant's case was to the effect that the Claimant either knew of the Defendant's actual occupation of the property or failed to inspect the property prior to purchasing - but in any event, that he had been physically in occupation of the property prior to its sale to the Claimant. The Claimant maintained under cross examination that she'd purchased a lot with vacant possession; that she'd physically inspected the lot prior to purchasing it and that it was only in October, 2015, after she became the owner, that the Defendant erected what she termed 'a shanty' on the property within a very short time. Counsel for the Claimant declined to cross examine the Defendant.

### **The Court's Consideration**

*Issue (i) – the option to purchase as an overriding interest*

#### *Submissions*

9. The Defendant's legal response to the claim was that his lease agreement granted him an option to purchase the freehold of the property, which he exercised upon execution of the agreement and payment of the deposit according to the agreement's terms. That option to purchase, it was said, was a right held by the Defendant, and given that he had been in occupation of the land at the time of purchase by the Claimant, his option to purchase the property was entitled to protection as an overriding interest pursuant to section 31(1)(g) of the Registered Land Act, Cap. 194. Counsel for the Defendant referred to a decision from the Jamaica Supreme Court in support of this contention, namely **Broadway Import and Export Ltd. v Levy**<sup>1</sup>.

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<sup>1</sup> JM 1996 SC 13

According to Counsel, the option therein was described as ‘an irrevocable offer to sell’ which once accepted, materialized into a contract for sale of the premises. More particularly, Counsel pointed the Court to the reference in that case to **Webb v Pollmount Ltd.**<sup>2</sup> where the option to purchase was described as an interest in land capable of being exercised and enforced against the land in the hands of any person who acquired it other than a bona fide purchaser for value without notice.

10. Counsel for the Defendant also referred to the decision of the Belize Supreme Court of **Sosa v Acosta & Martinez**<sup>3</sup> as illustrative of the application of section 31(1)(g) insofar as it protects the interests of the occupier of registered land. From this case, Counsel commended the principle that the occupation is not what is protected but the interest of the person in occupation. In this regard therefore, Counsel for the Defendant asks the Court to accept not only that the Defendant was in occupation of the property but also that he holds an interest in the property in the form of his option to purchase and is accordingly entitled to the protection of section 31(1)(g) of Cap. 194. On the other hand, Counsel for the Claimant’s submissions were to the effect that the Defendant’s lease having been forfeited and entry of the forfeiture having been made in the register, the Claimant was entitled to her land absolutely and free from all encumbrances. Counsel for the Claimant submitted that nothing had been put before the Court that could defeat the registration of the Claimant’s title and that any issue of the lease having been wrongfully forfeited by Reconddev was a matter between the Defendant and Reconddev. Counsel for the Claimant pointed out that albeit having been given opportunity to file an ancillary claim in the matter, the Defendant failed to do so. In the circumstances, it was contended that the Claimant was entitled to recover possession of her land and to have the caution entered at the behest of the Defendant removed.

#### *Discussion and analysis*

11. The Registered Land Act, Cap. 194 governs the system of registration of title in Belize and is patterned after the Australian Torrens System of Registration of Title.

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<sup>2</sup> [1966] 1 All ER 481

<sup>3</sup> BZ 2011 SC 35; Belize Supreme Court Claim No. 285 of 2009.

The foundation and backbone of this system is of course the indefeasibility of the register as the means of evidencing ownership of land and recording all dealings with land falling within the statutorily designated areas of registration. By way of illustration of this principle, reference is made to the Privy Council's decision of **Damodaran Raman v Choe Kuan Him**<sup>4</sup>, in which Lord Diplock expressed the following:-

*"The cardinal principle of the statute is that the register is everything, and that, except in cases of actual fraud on the part of the person dealing with the registered proprietor, such person, upon registration of the title under which he takes from the registered proprietor, has an indefeasible title against all the world.*

The above principle needs no further expansion, however as was discussed in the decision of **Sosa v Acosta & Martinez**<sup>5</sup>, which was cited by Counsel for the Defendant, the indefeasibility of registered title is nonetheless subject to the statutory exception of overriding interests as provided in section 31(1) of Cap. 194. This section (as is relevant in this case) provides as follows:-

*"Subject to subsection (2) of this section, unless the contrary is expressed in the register, all registered land shall be subject to such of the following over-riding interests as may for the time being subsist and affect it, without their being noted on the register,*  
*(a)...(f)*  
*(g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof except where inquiry is made of such person and the rights are not disclosed..."*

12. According to Halsbury's Laws of England, overriding interests '*are all encumbrances, interests, rights and powers not entered on the register but to which registered dispositions under the Land Registration Act 1925 ('the UK LRA, 1925'), take effect*<sup>6</sup>. The liability to an overriding interest may be defeated by a contrary intention expressed on the register. There are a number of circumstances which may give rise to categorization of an overriding interest and in this regard, as did the UK LRA 1925, (section 70), section 31(1) of Belize's Cap. 194 lists those interests capable of subsisting as overriding interests.

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<sup>4</sup> [1980] AC 497

<sup>5</sup> Supra n.3.

<sup>6</sup> Vol. 23 3<sup>rd</sup> ed. para 346.

With respect to that which is under consideration, section 31(1)(g), the protected interest is expressed in identical terms. The Court's consideration of the application of this section will therefore be assisted by cases decided on the UK's LRA section 70. As may be evident, the nature of the rights to be protected under paragraph 31(1)(g) are neither itemized nor defined, hence the first issue to be determined, of whether an option to purchase is entitled to protection as an overriding interest. Counsel for the Defendant had cited Jamaica Supreme Court decision *Broadway Import and Export Ltd. v Levy*<sup>7</sup> which applied *Webb v Pollmount Ltd*<sup>8</sup>. The latter decision is considered the more useful authority as it examined at length, the application of the UK's parallel provision to section 31(1)(g), (section 70(1)(g), LRA 1925), with specific reference to an option to purchase in a lease. It was held in both cases that an option to purchase the freehold estate of a lease was an overriding interest, however the more in depth analysis offered in *Webb v Pollmount Ltd* is of greater direct assistance to the Court regarding the principles which arise for determination in this case<sup>9</sup>.

13. The facts in *Webb v Pollmount* are briefly thus:- the plaintiff was a lessee under a lease of registered land, which contained an option to purchase the freehold reversion. The defendants were the lessors' successors in title. The plaintiff exercised the option by giving notice to the defendants, who asserted that the option was not binding on them as successors in title, as it had not been registered as a land charge as it ought to have been. The plaintiff claimed that having been in occupation of the land at all material times, including the time of the assignment of the reversion, the option was an overriding interest within the terms of section 70(1)(g) and as such, binding on the defendants. The question of whether the option to purchase was an overriding interest was the only issue before the Court. In considering the issue, Ungood-Thomas J. extracted the option to purchase which formed part of the plaintiff's lease:-

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<sup>7</sup> Supra n. 1

<sup>8</sup> Supra n. 2

<sup>9</sup> It should be noted that under section 103(1)(e) of the Law of Property Act of Belize, Cap. 190, an option to purchase land is registrable as an incumbrance against land however the effect of the right on registered land given the nature of the registered title must still be examined.



*“The lessee shall have the options following:- (1) [this provides for an option to renew with which we are not concerned] (2) During the first three years of the term of the lease to purchase the freehold of the property at the price of \$3,500”*

Thereafter, as is pertinent to this case, Ungoed-Thomas J. examined the definition of ‘overriding interests’ as provided in section 3(xvi) of the LRA 1925. This definition is that given in Halsbury’s above:-

*“Overriding interests’ mean all the incumbrances, interests, rights and powers not entered on the register but subject to which registered dispositions are by this Act to take effect.”*

14. Ungoed-Thomas J reduced this definition of an overriding interest into three elements expressed in the following manner – (i) the interest under consideration should not be entered on the register, albeit may include interests which are registrable (i.e. capable of registration); (ii) and (iii) the term ‘*subject to which registered dispositions are by this Act to take effect*’. This term is interpreted with reference to section 20(1) of the LRA 1925, the equivalent of which in Belize is section 26 of Cap. 194<sup>10</sup>. According to the context provided by this section therefore, in order to qualify as an overriding interest, the matter under consideration must be one ‘*affecting the estate transferred or created*’<sup>11</sup>. With respect to the meaning of ‘*affecting the estate transferred or created*’, Ungoed-Thomas J, states that ‘*the statute itself does not answer this question: It raises it. The answer is only to be found by reference to the general law in whose context the statute was enacted*’<sup>12</sup>. In answering this question, the learned judge made reference to **National Provincial Bank Ltd. v Ainsworth**<sup>13</sup>, and concluded that

*“...for a right to be within section 70(1)(g), it must be an ‘interest in the land’ ‘capable of enduring through different ownership of the land according to normal conceptions of title to real property”*

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<sup>10</sup> This section is that which provides that the effect of the registration of a disposition of land or interest in land is that of absolute ownership of the land or interest in land, subject to any incumbrances noted in the register (s.26(a)) or to rights, privileges or interests affecting the land as provided in section 31 (s.26(b)).

<sup>11</sup> Webb v Pollmount @ 484-485, supra n 2

<sup>12</sup> *Ibid.*

<sup>13</sup> [1965] 2 All ER 472 @ 488

15. Thereupon, it was said by Ungood-Thomas J in **Pollmount**, that (emphasis mine):-

*“An option to purchase is an interest in the land in respect of which it is exercisable, whether contained in a lease or not. If contained in a lease, it differs from such an option not so contained only in that the parties are landlord and tenant and it is part of the terms on which the lease is granted. Though contained in a lease, it is collateral and does not ‘touch’ or ‘concern’ or ‘affect’ the land ‘regarded as the subject matter of the lease’, but is wholly outside the relation of landlord and tenant...As an option to purchase is an interest in land, it was capable before 1926 of being exercised and enforced against the land in the hands of any person who acquired it order [sic] than a purchaser for value without notice...”*

At first glance, there appears to be some contradiction by the learned judge as pertains to his prior statement that to be an overriding interest (interest broadly speaking), the interest must have the capacity to ‘affect the estate transferred or created’. In the above extract, it is said that an option to purchase a lease, does not touch, concern or affect the land the subject matter of the lease. The possible confusion is created by reference to the term ‘affect the land’, but it is however clarified a little further in the judgment, which is extracted as follows:-

*“Although an option to purchase does not, like an option to renew, ‘touch’, ‘concern’ or ‘affect’ ‘the land demised and regarded as the subject matter of the lease’ (so as e.g., to bind the reversion under the statute relating to grantees of reversions), what we are concerned with here is not whether it so ‘affects’ ‘the land demised’ and is within the relationship of landlord and tenant...but whether within s. 20(1)(b) it is an interest ‘affecting the estate transferred’ to the defendants. That it is capable of affecting the estate transferred to the defendants is not disputed: eg, if the defendants had notice of it before transfer to him. So, it seems to me to fall within Russell LJ’s test of ... “being capable of enduring through different ownerships of the land, according to normal conceptions of title to real property”. If it, thus, in the circumstances of this case, is a right “affecting the estate transferred”, within the requirement of s 20(1) (b), it seems to me that it is “for the time being subsisting in reference to” registered land within the requirement of s 70(1). My conclusion, therefore, is that subject to deciding the question as to the effect of s 59, the option to purchase appears to be an overriding interest.”*

According to general principles, an option to purchase constitutes an irrevocable offer to sell, which once accepted by exercise of the option, brings into being a contract for sale of the land (see **Mountford v Scott**).<sup>14</sup>

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<sup>14</sup> [1975] 1 All ER 198 @ 199

16. Upon the creation of the contract for sale by exercise of the option for purchase, what is termed a 'fairly fundamental principle' regarding the position of a purchaser entering into a contract for sale of land, comes into play. This is, as per Lord Scott of Foscote in **Jagdeo Sookraj v Buddhu Samaroo**<sup>15</sup>:-

*A purchaser who enters into a specifically-enforceable contract for the sale of land acquires an equitable interest in the land and retains that interest for as long as the contract remains enforceable.*

It is against this background of the operation of interests in land and registration of title that the categorization of an option to purchase must be understood.

Having regard to the law as understood by the Court, an option to purchase establishes an equitable interest in the estate of the land, which can be enforced against persons thereafter acquiring title with notice and as such is entitled to protection as an overriding interest. The question remains however whether the Defendant possessed an option to purchase in his lease; whether the option was exercised; and if the Claimant had notice of his interest created by the option to purchase.

*Issues (ii) – Whether the Defendant held an option to purchase and (iii) the effect of the Defendant's agreement on the Claimant's title.*

#### *Evidence*

17. The Defendant produced his lease, which was valid for a period of ten years, commencing from 30<sup>th</sup> April, 2009. The lease itself was in the prescribed form and incorporated sections 55-58 of Cap. 194, which provide for the covenants to be implied in respect of both lessor and lessee in a registered lease. The lease was also subject to the construction of a building of a design and structure approved by the lessor within one year from the date of commencement of the lease. The lease was registered in December, 2010 and the extract of the land register presented noted a restriction against dealings without the lessor's consent as well the lease being subject to 'specified lease conditions'. Both of these notations on the register were found by the Court to relate to the incorporation in the lease of the implied covenants provided in sections 55-58 of Cap. 194.

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<sup>15</sup> (2004) 65 WIR 401

There was no entry in the register recording an option to purchase. The agreement giving rise to the option to purchase as asserted by the Defendant was produced but there is no marking on that document from the land registry identifying it as having been registered. The agreement itself is dated 23<sup>rd</sup> March, 2009 and is entitled 'Lease Agreement with Option to Purchase'. It lists a purchase price of \$6,400.49; sets out payment conditions of a deposit of \$960 payable upon execution of the agreement; ensuing monthly payments of \$66.01 and a completion date for payment on 30<sup>th</sup> April, 2019 – which would be the date of expiry of the lease. The Agreement also set out that the lessee was entitled to possession of the property upon payment of the deposit, but possession was expressed as 'subject to payment of monthly deposits'.

18. Additionally, by a term in the agreement referred to as 'Special Conditions', the lessee was granted a licence to remain in possession of the property subject to conditions set out in the 2<sup>nd</sup> schedule and that upon full payment, Reconddev would give freehold title free from encumbrances to the lessee. The 2<sup>nd</sup> Schedule of this agreement titled 'Lease Agreement with Option to Purchase' provides for addition of interest in the event of non-payment of monthly installments for 3 months or more; after non-payment of installments for six months or more, for the entire sum to become due and payable whether formally demanded or not and recoverable by Reconddev with interest in any manner allowed according to law. The 2<sup>nd</sup> Schedule also contained the following provision which because of its importance in the Court's view, is extracted in full:-

“(3) All monies paid by the LESSEE hereunder shall be forfeited to the Corporation who shall be entitled to rescind the sale and revoke their licence to the LESSEE to have possession of the property and themselves to re-enter upon and take possession thereof and to resell the same either by public auction or private contract without prejudice to any right of the Corporation to recover damages.”

The lessee's user of the property was restricted to residential purposes by construction of a home. The usual restriction against dealings or parting with possession without consent were also included in the 2<sup>nd</sup> Schedule.

### *Discussion and Analysis*

19. A number of observations need to be pointed out in respect of this Agreement. Firstly, the capacity of the parties vary in description within the agreement. On the one hand, the owner of the property Reconddev, is described throughout the Agreement as 'the Corporation', save for paragraph 2 of the 2<sup>nd</sup> schedule, where it is described as 'the vendor'. The Defendant, is described for the most part in the agreement as 'the lessee', but is also referred to as 'the purchaser'. Secondly, despite being titled 'Lease Agreement with Option to Purchase', there is no demise of the property. The operative part of the agreement in which the demise ought to have been made provides that the '**Corporation agrees to sell and the Purchaser agrees to purchase...the land in question subject to the terms and conditions of set out in the schedules**'. Thirdly, there is actually no option in its true sense of a contractual undertaking. An option to purchase as previously stated, is an irrevocable *offer* to sell which by its nature, will stipulate some terms upon which that irrevocable offer is to be accepted. The acceptance may be effected by notice required to be given within a certain time, or there may be conditions precedent to the giving of notice to exercise the option. Such conditions may be payments to be made for the notice to be effected in a certain manner. What characterizes an option to purchase is that the option is capable of being refused by the holder thereof.
20. None of the above features characterize the document presented by the Defendant as a 'lease agreement with option to purchase'. There are not many principles in law that this Court chooses to ascribe the label 'trite', but on this occasion, it is appropriately viewed as 'trite', that a document can be described by its makers in any manner, but it is the intention of the parties as evidenced by the rights and obligations arising or created thereunder, that determines the true nature of the agreement made. As found with respect to the agreement, there is no demise of the property; there is a price stated for purchase of the land; the terms of payment relate only to the purchase price; the time for completion of the purchase price bears no reference at all to a demise; and there is no election on the part of the lessee to decline the purchase.

It is therefore the Court's position that having regard to the terms of the agreement, it is not a lease agreement with an option to purchase, but an agreement for purchase of the land, subject to the terms and conditions therein. But what does the existence of this agreement mean with respect to the Defendant, his registered lease and the right he asserts as arising from his occupation of the land?

21. The decision of **Webb v Pollmount** discussed above can be revisited in answering this question. In much the same way as a true option to purchase contained in a lease is in law held to be a separate agreement not dependent on the relationship of landlord and tenant<sup>16</sup>, the agreement for purchase which was executed, albeit with reference to certain aspects of the terms of the lease, is also separate. The circumstances of this case include the fact that the lease registered in favour of the Defendant was forfeited. Section 59 of Cap. 194 governs the forfeiture of a lease, and there is a procedure to effect forfeiture that has to be complied with. There was however the instrument of forfeiture of the lease which was registered, thus whether effected according to section 59 or not, the forfeiture took full effect as a result of registration. Any question of the lawfulness or not of the forfeiture would have been an issue to be determined as between the Defendant and Recondem. This position in respect of the Defendant's lease notwithstanding, as the agreement for sale stands separate from the lease it is to be examined on its own merits. Insofar as it was an agreement for sale, the execution thereof would have created an equitable interest in the land in favour of the Defendant<sup>17</sup>.
22. Once validly subsisting at the material time, that equitable interest could qualify as an overriding interest under section 31(1)(g) of Cap. 194. In other words, despite not having been found to be an option to purchase, the agreement asserted by the Defendant as giving rise to an option to purchase could qualify as an overriding interest, except of a different nature. The agreement's qualification or not as an overriding interest would of course have to be subject to the Defendant being found to have been in actual occupation of the land – but this is an issue not yet under consideration.

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<sup>16</sup> **Webb v Pollmount** supra @ 485

<sup>17</sup> Jagdeo v Sookraj supra n. 14

With respect to the equitable right that the Defendant has or better stated - ought to have as a result of the agreement for sale entered into with Reconddev, the question is whether that right subsisted at the time of the Claimant's registration as owner of the property. Paragraph 3 of the 2<sup>nd</sup> Schedule of the agreement gives Reconddev inter alia, the following rights:- (i) to rescind the sale (yet another reason why the agreement cannot be considered an option to purchase); (ii) to revoke the license to the lessee (this term is somewhat perplexing as the lessee is in any event entitled to possession of the property by virtue of the separate lease); and (iii) to take possession of the property and resell same whether by public auction or private contract. Having sold the property to the Claimant, Reconddev had clearly exercised their rights under paragraph 3 of the second schedule to rescind the agreement and resell the property. The subsistence or not of the Defendant's equitable interest in the property which was created upon execution of the agreement, would depend on whether or not that agreement was rightfully rescinded by Reconddev. Such a determination, could only have been made by successfully asserting a claim of breach of contract against Reconddev.

23. The equitable interest in land created by execution of an agreement for sale arises by virtue of the right of the purchaser to specifically enforce the agreement. It would have been for the Defendant, to have had his equitable right declared under that agreement, by bringing an ancillary claim against Reconddev for breach of the agreement and for the remedy of specific performance. Had the Defendant so done and the Court so found, it is only then that the issue would have arisen, of the Defendant's occupation of the property giving rise to the protection of his equitable interest in the property (as purchaser under the agreement) as an overriding interest. This conclusion is not unlike the position taken by the court in **Sosa v Acosta & Martinez**<sup>18</sup>, one of the authorities relied upon by Counsel for the Defendant. In this case the vendor Martinez was found to have entered into agreements for sale with both the claimant and the 1<sup>st</sup> defendant in respect of registered land. The 1<sup>st</sup> defendant's contract which was first in time was established by oral agreement and part performance whilst the claimant's contract for sale was written.

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<sup>18</sup> *Supra n. 3*

The 1<sup>st</sup> defendant was found not to have completed his agreement by failing to pay the balance of the purchase price, whereas the claimant's purchase was completed and he was registered as owner of the land. The 1<sup>st</sup> defendant had been in occupation of the property at the time of completion of sale to the claimant and remained in occupation thereafter. The 1<sup>st</sup> defendant's occupation gave rise to the proceedings for recovery of possession by the claimant. The vendor Martinez (who was the 2<sup>nd</sup> defendant in the claim) was nowhere to be found and took no part in the proceedings – but he was a party to the claim. In answer to the claim for possession, it was submitted on behalf of the 1<sup>st</sup> defendant that the claimant purchased the property subject to his overriding interest as equitable owner (in actual occupation of the land), by virtue of his agreement for sale.

24. In determining the issue of whether the claimant's ownership was subject to an overriding interest in favour of the 1<sup>st</sup> Defendant, Hafiz J. (as she then was), posed the question as to whether the 1<sup>st</sup> defendant had proved that he had rights to the property<sup>19</sup>. The learned judge thereafter proceeded to examine the evidence before her and was led to the conclusion that the vendor Martinez had rescinded his agreement with the 1<sup>st</sup> defendant by virtue of the latter's repudiation in failing to pay the balance of the purchase price. The learned judge further posed the question as to whether it was reasonable in the circumstances before her, for the vendor to have done so. She determined that it was so reasonable, and the result was that the 1<sup>st</sup> defendant had no contract of sale existing and consequently, no interest in the property, at the time of the registration of the claimant as owner of the property. The claimant was found registered absolutely as owner and entitled to possession of his property. The difference between this case and the case currently before the Court, is that in the former case, the question of the validity of the 1<sup>st</sup> defendant's contract with the vendor was properly before the court as an issue to be determined. The fact that the vendor did not partake in the proceedings affected only the evidence before the court, as opposed to the determination of the issue.

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<sup>19</sup> Sosa v Acosta @ paras 46-47



25. In the instant case, the evidence before the court in relation to the Defendant's legal position, is that his lease was forfeited and an instrument of forfeiture was registered thus extinguishing that estate. The Defendant therefore could not rely on his lease without a successful challenge of the forfeiture in his favour. Such a challenge could only be mounted against Recondex and there was no such challenge. With respect to the Defendant's agreement for sale with Recondex, which is what the Court has determined the 'option to purchase' really is, as this agreement is capable of affording the Defendant an equitable interest in the property, it is likewise capable of being protected under section 31(1)(g). However, the agreement itself provides for Recondex to rescind it, to forfeit moneys already paid, to enter upon and retake possession of the property, and to resell the property to someone else. The evidence before the Court is that Recondex rescinded the agreement. Unlike in *Sosa* above, where the errant vendor was party to the proceedings, Recondex is not a party to these proceedings thus any issue of the wrongful rescission or not of the Defendant's agreement is not before the Court.
26. By way of illustration, in **Spiricor of St. Lucia Ltd v The Attorney-General of St. Lucia et al**,<sup>20</sup> the OECS Court of Appeal, (per then Byron CJ) decided an appeal on the similar facts of a first purchaser in possession facing eviction from a subsequent purchaser, where the first purchaser's agreement for sale had been rescinded. The history of the proceedings was summed up by Byron CJ as follows (emphasis for illustration mine):-

*"The appellant claimed to be entitled to declarations that the appellant is the owner and entitled to possession of the Cul-de-Sac Distillery and is entitled to delay payment of the balance of the purchase price until the disturbance of his possession ceases to exist by virtue of a deed of sale dated 20 July 1987 evidencing that the first respondent sold certain registered lands, buildings and equipment, known as the Cul-de-Sac Distillery to the appellant (with the balance of the purchase price to be paid over five years, secured by privilege of vendor); and to a further declaration that the agreement for sale made on 1 February 1990 whereby the first respondent wrongfully agreed to sell the Cul-de-Sac Distillery and other lands to the second respondent is null and void. The appellant also claimed special damages for eviction or conspiracy in the sum of \$86,625,000 and general and exemplary damages on the basis that the second respondent, aided and abetted by the first respondent, wrongfully evicted the appellant from the premises and by their*

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<sup>20</sup> (1997) 55 WIR 123

- agreement the two respondents conspired to injure the appellant by causing the first respondent to break its contract of sale. The first respondent counterclaimed for rescission of a memorandum of understanding it made with the appellant for the development of the distillery, and the refund of \$212,015.43 being moneys expended to secure the distillery after the appellant failed to supervise, utilise or maintain it, and damages”*
27. The appellant in the proceedings above was the original purchaser, the vendor the Government of St. Lucia and the 2<sup>nd</sup> Respondent, the purchaser after the Government rescinded the appellant’s agreement for sale. The issue of the right of the Government to have rescinded the agreement was specifically in issue before the Court and the evidence received and determined accordingly. As stated before, that is not the situation in the case at bar. Albeit given ample opportunity to file an ancillary claim<sup>21</sup>, the Defendant did not do so. As a result, the evidence before the Court must stand on its face, which is that the vendor, Recondex, exercised its right to rescind its agreement for sale with the appellant and resell the property to the Claimant. The Defendant’s agreement having been rescinded, and there being no appropriate challenge by the Defendant against Recondex for having wrongfully done so, there is and can be no finding that he possessed any equitable interest in the property, which could be enforced against the Claimant as an overriding interest. The third issue therefore of whether or not the Defendant was in actual occupation of the property or whether the Claimant knew of his occupation is therefore rendered moot. Whether in occupation or not, with or without the knowledge of the Claimant, the Defendant stands with no interest in the property proven before the Court to be considered as an overriding interest. The Claimant is accordingly entitled to judgment on her claim for possession.

### **Disposition**

28. The claim is disposed of in favour of the Claimant and the following orders made:-
- (i) The Claimant is declared the registered owner with absolute title free from all encumbrances, of the property Parcel 4491, Block 20 Belmopan Registration Section;

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<sup>21</sup> As per the history of the proceedings outlined in paras. 4-5 supra.

- (ii) The Defendant is a trespasser on the property and is ordered to deliver up possession to the Claimant forthwith;
- (iii) The Registrar of Lands is directed to forthwith remove the caution registered by the Defendant against the property described in paragraph 28(i) herein.
- (iv) Costs are awarded to the Claimant in the sum of \$3,000 which is increased to the final amount of **\$3,250** after adjustments to reflect the awards of costs made earlier in the proceedings, in favour and against both parties.

Dated this 28<sup>th</sup> day of February, 2018.

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**Shona O. Griffith**  
**Supreme Court Judge.**