

COLONY OF MONTSERRAT

IN THE HIGH COURT OF JUSTICE

SUIT No. 53 of 1992

NICOL TAYLOR AND MARILYN TAYLOR

Plaintiffs

AND

JOHN DUBLIN

Defendant

Appearances:

Mr. John Kelsick for the Plaintiffs

Mr. K Allen Q.C. for the Defendant

JUDGMENT

[1] The plaintiffs are an American building contractor and his wife. They visited Montserrat in early 1989 shortly before the passage of hurricane Hugo which was regarded as the most significant natural disaster to happen in Montserrat up to that time. They entered negotiations with the defendant, a local businessman, with a view to purchasing from him a dwelling house at Foxe's Bay which was thought by the plaintiffs' at the time to be owned by the defendant and a Mrs. Nancy Erb. Indeed, the bulk of the early negotiations seemed to have been done between the plaintiff Mr. Taylor and Mrs. Erb.

[2] An agreement, was entered into by the plaintiffs and the defendant whereby the plaintiffs were to purchase an incomplete structure for a dwelling house from the defendant for a sum of US\$230,000.00; and the defendant who was also described as a building contractor would complete the structure and make improvements to the property for a further sum of \$100,000.00. This made an overall transaction amount of US\$330,000.00 which the parties agreed would have given to the plaintiffs in the end the dwelling house with certain improvements thereto as added by the defendant. The improvements envisaged and agreed between the parties included the satisfactory completion of the dwelling house with an apartment added and a swimming pool. Furnishing the dwelling house and the apartment was also included in the overall transaction. The two matters though were the subject of separate documents.

[3] Moneys were paid by the plaintiffs to the defendant but the property was not transferred to the plaintiffs nor was any progress satisfactory to the plaintiffs made under the building contract. Consequently, the plaintiffs filed a generally endorsed writ of summons claiming thereby the following:

"1. Rescission of an agreement contained partly in letters passing between the Plaintiffs and the Defendant and the Defendant's agent, Nancy Erb of Woodlands, Montserrat, and in written

agreements made between the Plaintiffs and the Defendant on or about the month of July 1989 for the sale by the Defendant on or about the month of July 1989 for the sale by the Defendant to the Plaintiffs of the freehold property consisting of a partly furnished dwelling house and a lot of land situate in the Foxes Bay Housing Estate in the island known as Turtle vue and recorded in the Register of Titles of Montserrat as parcel 23 block 7/5 Elberton Registration Section for the sum of U.S.\$325,000.00.

2. Repayment of the amounts paid by the Plaintiffs on account of the purchase price totaling U.S.\$127,500.00.
3. Damages for breach of the said agreement.
4. Damages for trespass to various items of furniture, household equipment and personal belongings being the property of the Plaintiffs kept by the Plaintiffs in and about the said dwelling house.
5. Interest on the said down payment and damages for such period and at such rate as this Honourable Court should consider just.
6. A declaration that the Plaintiffs are entitled to a lien on the said freehold property for the said down payment, damages, interest and costs recovered by the Plaintiffs in this action."

[4] A statement of claim was filed sometime later and in that the plaintiffs made the following averments:

- "2. On or about the month of March, 1989 the plaintiff entered into negotiations with the defendant and the defendant's agent, one Nancy Erb of Woodlands, Montserrat, for the purchase of the defendant's property at Foxes Bay, Montserrat. Said property consisted of a partly finished unfurnished dwelling house on a lot of land recorded as parcel 23 block 7/5 Elberton Registration Section.
3. It was orally agreed between the plaintiffs and the defendant that the plaintiffs would pay the sum of US\$325,000.00 for the said property on condition that the defendant would complete the construction of the existing dwelling house and add thereto a downstairs apartment and a swimming pool and would furnish the dwelling house and apartment according to the specifications of the plaintiffs.
4. In the pursuance of the said oral agreement on the 18<sup>th</sup> March, 1989, the plaintiffs paid the defendant the sum of US\$5,000.00 and the first plaintiff wrote to the defendant on the 23<sup>rd</sup> March, 1989, seeking information pertinent to the purchase and ownership of property in Montserrat and itemising the equipment and furniture which the plaintiffs required to be supplied by the defendant as a part of the property to be sold by him to them.
8. On the 13<sup>th</sup> June, 1989, the plaintiffs remitted to Kenneth Allen Esq., who was retained to act as solicitor for both the plaintiffs and the defendant cheques for US\$8,000.000 and US\$10,000.00 to complete the down payment on the purchase price to be held in escrow until a landholding licence was issued to the plaintiffs.
9. On or about the month of July, 1989, the defendant's said agent Nancy Erb personally delivered to the plaintiffs in Lancaster, Pennsylvania, U.S.A. copies of an agreement for sale prepared by Kenneth Allen Esq., which agreement stated the sale price of the property to be

- \$230,000.00 and not \$225,000.00 as agreed between the plaintiffs and the defendant and provided for the payment of the same in full by the 15<sup>th</sup> July, 1989. Said agreement failed to state that the agreement for sale was conditional upon the defendant completing the construction of the dwelling house and the services thereto and equipping and furnishing same at the cost to the plaintiffs of US\$100,000.00. The plaintiffs nevertheless signed and returned said agreement to the defendant.
10. The defendant's said agent Nancy Erb also delivered to the plaintiffs a draft-building contract purporting to provide for the completion of the building and the additional work as agreed. Said draft building contract was incomplete and unacceptable to the plaintiffs as written and the plaintiffs returned same to said Nancy Erb and requested that it be corrected to reflect the terms of their oral agreement with the defendant.
  11. On about the 26<sup>th</sup> July, 1989, the said Kenneth Allen Esq., remitted by facsimile to the plaintiffs a copy of their landholding licence and a bill for legal services in connection with the transfer of title to the plaintiffs. The plaintiffs duly remitted the sum of US\$15,633.00 to settle the same.
  13. In further pursuance of the said agreement the plaintiffs paid to the defendant the sum of US\$100,000.00 on or about the 17<sup>th</sup> August, 1989 and signed a demand promissory note in the defendant's favour providing for the payment to him of a further US\$100,000.00.
  15. On or about the last week of September, 1989, the first plaintiff visited Montserrat to inspect the damage caused to the property by Hurricane Hugo, which struck on the 17<sup>th</sup> September, 1989, and on his return to the U.S.A., dispatched a letter by facsimile to said Nancy Erb expressing concern at the defendant's lack of progress in carrying out the said work as agreed and to commence repairs of the damage to the property caused by the hurricane.
  17. On or about the 16<sup>th</sup> November 1989, the defendant telephoned the plaintiffs and assured them that the building work was almost completed. [On or about the for defendant 1989,] the defendant again telephoned the plaintiffs and told them that due to unavailability of building materials on Montserrat he would not be able to complete the work until the end of January, 1990. The plaintiffs by letter dated the 8<sup>th</sup> December, 1989, confirmed the said telephone conversation and, *inter alia* advised the defendant that they would be coming to Montserrat in February, 1990, to take possession of the property.
  21. On the 30<sup>th</sup> March 1990, the defendant abandoned the work before same was completed and has never completed same.
  22. Subsequent thereto on a date unknown to the plaintiffs, the defendant forcibly entered the said dwelling house and took possession thereof together with the sundry personal belongings and furnishings belonging to the plaintiffs and kept by them in and about the said premises. The defendant has refused to return possession of the said property to the plaintiffs and has advertised same for sale.
  23. As a consequence of the defendants said conduct in (i) failing to complete the said work in a workmanlike manner or at all, (ii) abandoning the said work, (iii) wrongfully and in breach of contract depriving the plaintiffs of possession of the said property and its contents the plaintiffs have suffered losses and damage.

[5] In his defence to that statement of claim the defendant stated as follows:

1. The defendant contends that, referring to the agreement mentioned in paragraph 1 of the plaintiffs' statement of claim or any agreement made between the plaintiffs and the defendant, the defendant performed his contract save in so far as he was unable so to do by the plaintiffs' failure or inability to provide funds for the said purpose and that the plaintiffs are not entitled to rescind the agreement.
2. Referring to paragraph 2 of the plaintiffs statement of claim, the defendant accepts that he received US\$127,500 being part payment of the purchase price of real property at Foxes Bay, Montserrat, the said purchase price being US\$230,000.00.
4. The defendant contends that the plaintiffs are indebted to him inter alia in the sum of US\$102,500 being the balance of the said purchase price.

### COUNTERCLAIM

7. On or about the 7<sup>th</sup> day of April 1989, the defendant entered into an agreement for sale with the plaintiffs for the sale to them of lands and a dwelling house at Foxes Bay, Montserrat together with furniture and furnishings for \$230,000.00 United States Currency. For the purpose of this agreement the said lands and dwelling house were valued at US\$216,000.00 and the furniture and furnishings at \$14,000 United States Currency.
8. In addition, by way of an independent agreement, the defendant agreed to carry out certain improvements on the said premises for which the plaintiffs would pay \$110,000.00 United States Currency and the plaintiffs agreed to pay all unpaid balances by agreed installments and the plaintiffs executed a promissory note for the said sums.
9. On account of a reversal of fortune or for some other reason personal to them, the plaintiffs were unable to meet their obligations to the defendant and sought to repudiate the contract.
10. Without prejudice to his right to specific performance of the said agreement, the defendant agreed to put up the said property for sale and pay to the plaintiffs any sums due to them or found to be due to them after amicable negotiations, but the plaintiffs through their Solicitor instituted proceedings to stop the defendant from advertising the said property, and the defendant voluntarily on the advise of his Solicitor withdrew his advertisement.
- 11.(a) The defendant therefore claims an order that he be at liberty to sell the said property and that he should use his best endeavours in so doing, and to reimburse to the plaintiffs without interest, those sums advanced by them and that there shall be no obligation to the plaintiffs until the time of such sale.  
(b) In the alternative, the defendant repeats paragraphs 1 and 2 of the statement of claim and claims damages for breach of contract.  
(c) The defendant claims his costs in this action in any event."

[6] The plaintiffs filed a reply and defence to counterclaim and further identified their reliefs they sought in the following terms:-

1. Rescission of the agreement for sale;
2. Damages of US\$232,500.00;
3. A declaration that the plaintiffs are entitled to a lien on the said property for any damages, interest and costs awarded in this action.

[7] At the trial the plaintiff Nicol Taylor alone gave evidence to support his case. The defendant and another witness, Mr. James Harper, testified for the defence.

[8] Just as appeared in the less than happily crafted statement of claim the plaintiff Mr. Taylor gave much evidence that did not necessarily advance his cause or take the case in the direction in which it had to go. All the issues in the case would seem to me to revolve around the two written contracts which the parties executed for the sale and purchase of the dwelling house and the completion and extension of the said dwelling house.

[9] In the statement of claim and throughout his time on the stand giving evidence Mr. Taylor harked back to what he termed an oral agreement but which was no more than the preliminary negotiations for the contracts between the plaintiffs and the defendant in light of how the events turned. Indeed in his evidence Mr. Taylor produced both of the agreements which are at the crux of the matter. Despite his deep-seated feeling that the written documents did not accurately represent all that was agreed between them it is on those documents which were executed by the plaintiffs and the defendant and fully recognized by them that the case had to be tried. Indeed the plaintiff was seeking as one of its reliefs the rescission of the agreement for sale.

[10] Mr. Taylor testified that he visited Montserrat in early 1989 and met the defendant with whom he started negotiations for the purchase of an incomplete building owned by the defendant. This building was in Foxe's Bay. Much of the negotiating between the plaintiffs and the defendant was done with a third party involved. This third party was one Nancy Erb who was later to act like the agent of both sides the plaintiffs' and the defendant's. I got the impression from the evidence of Mr. Taylor and the defendant in his turn that much of the difficulties that have dogged the relationship between them may be attributable to this involvement of Nancy Erb.

[11] Mr. Taylor further testified that the arrangement that he thought came out of the negotiations was that the plaintiffs would have purchased the incomplete dwelling house for U.S.\$225,000.000. The defendant and the plaintiffs would then enter another contract for the defendant to complete the dwelling house and make a few additions to it for a separate sum of U.S. \$100,000.00. He said that he and his wife left Montserrat with the understanding that they had a firm arrangement with the defendant on those terms.

[12] Mr. Taylor testified that after his return to the United States of America he started a spate of correspondence, mostly one way from the United States to Montserrat, designed to flesh out what he thought had been fairly settled between the parties. He testified as to sending on to the defendant details of what he wanted as the additions to the dwelling house and such other things

as he who was also knowledgeable about architecture and construction would have expected to see set out in a written contract for the work to be done by the defendant. Mr. Taylor said that he was the president of a construction and architectural firm.

[13] Mr. Taylor also testified that notwithstanding the details relating to the purchase of the property and the completion and improvement of the dwelling house he sent in letters to the defendant when he saw the written contracts forwarded for execution those documents did not contain what he expected. Even the purchase price for the property was different in the written document it appearing as \$230,000.00 instead of the \$225,000.00 he was sure they settled on in the negotiations. Nevertheless the plaintiffs executed both of the documents without changing the terms set out in those documents.

[14] Mr. Taylor testified that he got those documents from Mrs. Nancy Erb who lived in the United States not very far away from where he himself lived. He also continued talking with Nancy Erb after the contracts were executed. It appeared that Nancy Erb was not a paragon of probity in her dealings with the plaintiffs and the defendant. She exhibited such duplicity in her dealings in this matter that the plaintiffs were convinced and Mr. Taylor so testified that she was the trusted agent of the defendant while the defendant was convinced, and so testified, that she was the trusted agent of the plaintiffs.

[15] It would appear that after the contracts were executed by the plaintiffs the plaintiffs continued to treat with Nancy Erb and received from her reports as to what may have been happening in Montserrat. The defendant testified that he too passed on what he thought was for the plaintiffs through Nancy Erb; and that may have accounted for the plaintiffs coming to the view that the defendant was among the most difficult of persons with whom to deal. The position between the parties not was helped by their being represented by the same solicitor.

[16] A considerable amount of evidence was given by Mr. Taylor on what happened in the transactions between the plaintiffs and the defendant. He testified of matters not proceeding along the lines he thought were agreed in the negotiations he had with the defendant. Unfortunately for him after the contracts were signed they defined the relationship between the plaintiffs and the defendant. And they may not have been entirely reflective of what the plaintiffs thought was the agreed position between the plaintiffs and the defendant.

[17] In that light therefore it would be good to set out hereafter some of the more important parts of the documents. The parts I set out hereafter are the ones out of which the greatest difficulties flow. Both documents were produced in evidence. The relevant parts of the agreement for sale were clauses 1,2,3,4,5 and 6 which were in the following terms:

- "1. The Vendor is the registered proprietor with absolute title to the Land known as Block 7/5 Parcel 23 Foxes Bay Subdivision in the Island of Montserrat, West Indies.

2. The Vendor has agreed to sell and the Purchasers to buy the said lands and premises and all appurtenances thereto free from incumbrances at the price of Two Hundred and Thirty Thousand Dollars (\$230,000.00) United States Currency.
3. The Vendor will sell and the Purchasers will buy the unencumbered fee simple in possession of ALL THAT lot of land known as Block 7/5 Parcel 23 Foxes Bay Subdivision including furnishing and fixtures at the price of US\$230,000.00 of which the sum of US\$23,000.00 has been paid prior to the execution of these presents by way of deposit and in part payment of the purchase price to be held in escrow by KENNETH ALLEN ESQUIRE, of Law Chambers, Marine Drive, Plymouth, Montserrat, upon the condition hereinafter stated.
4. The Purchasers shall pay the remaining balance of US\$207,000.00 on or before the 15<sup>th</sup> day of August, 1989 whereupon the Purchasers shall have a formal document of Transfer by way of proper assurance of the said land executed by the Vendor in their favour.
5. That the sale is conditional on the Purchasers obtaining the requisite Landholding Licence from the Government of Montserrat enabling them to hold absolute title in and to the said land. The Purchasers hereby undertake that they will with all dispatch make due application to the Government of Montserrat for the issue and grant in their favour of the requisite Licence under the Landholding Control Ordinance, 1970 of the Laws of Montserrat.
6. If the Purchasers shall be unable to obtain the requisite Landholding Licence and an acceptable mortgage as aforesaid this Agreement becomes void and the deposit of US\$23,00.00 shall be returned to them. If the Purchasers shall, however, obtain approval for the said Landholding Licence and an acceptable mortgage but shall fail to complete payment in full by the 15<sup>th</sup> day of August, 1989, this contract shall become void and the said deposit of US\$23,000.00 shall be forfeited and the Vendor shall be entitled to resell the property without tendering a document of Transfer to the Purchasers.

[18] The relevant parts of the building contract were the recital, schedule and clauses 1,2,3,4,5,and 6 which are in the following terms:

"THIS AGREEMENT made the 15th day of August, 1989, BETWEEN NICOL C. TAYLOR and MARILYN E. TAYLOR of 105 Bentley Lane, Lancaster, PA. 17603, U.S.A. (hereinafter called "the Employer") of the ONE PART and JOHN DUBLIN, a Building Contractor having his place at Marine Drive, Plymouth, Montserrat, (hereinafter referred to as "the Contractor") of the OTHER PART.

WHEREAS, the Employers are desirous of having certain building works complete on Block 7/5 Parcel 23 Foxes Bay Subdivision in the Island of Montserrat, which said lands are owned by them and in possession of the Employers, all in accordance with the drawings and specifications which have been inspected, agreed upon and signed by the Employers and the Contractor, dated the 15<sup>th</sup> August, 1989, and marked hereto for identification.

NOW IT IS HEREBY AGREED by the Employers and the Contractor as follows:-

1. The Contractor will execute and complete the works shown on the said drawings and more specifically detailed in the specifications and the schedules relating thereto, with materials and workmanship of standard quality for the sum of One Hundred Thousand Dollars (US\$100,000.00) United States Currency, which said sum shall include all labour and transport costs and the cost of all materials in connection with the construction of the said building, and all subsequent landscaping and furnishing.
2. Possession of the site will be given to the Contractor on the 15<sup>th</sup> day of August, 1989, and shall begin the works immediately after such possession and shall proceed deligently with the works and shall complete the same on or before the 30<sup>th</sup> day of November 1989.
3. The Contractor shall comply with all rules, regulations and by-laws of any local authority, water or lighting authorities and shall conform to the provisions of any Acts, Ordinances or Regulations relating to the works and shall give all notices required by any Acts, Ordinances, Rules, Regulations and by-Laws and pay all fees legally demandable, including stamp duty and filing charges legally payable for the registration of the Agreement.
4. The Employers and the Contractor agree that no variation shall invalidate this Agreement provided that no variation shall be carried on unless approved in writing by the Employers or any authorized Agent acting on their behalf.
5. (a) This Contractor shall be liable for and shall indemnify the Employers against loss, claim or proceedings whether arising in Common Law or under any Acts, Ordinance in respect of personal injuries to persons in his employment arising out of or in the course of the execution of the Contract.  
 (b) The Contractor shall be liable for and shall indemnify the Employers in respect of any liability, loss, claim or proceedings and for any injury or damage whatsoever arising out of or in the execution of the Contract works to any property, real or personal, due to any negligence or omission, or default of himself, his agents or his servants or of any sub-contractor or any circumstances within his control.
6. The works from the commencement until they are taken possession of by the Employers shall stand at the risk and be in the sole charge of the Contractor and shall forthwith insure them and keep them insured until they are delivered up against loss or damage by fire, storm, acts of God or intentional acts of man in the joint names of himself and the Employers, for the full value of the works executed.

**SCHEDULE OF PAYMENTS**

First payment	
of US\$27,500.00	On commencement of contract on or about August 15, 1989.
Second payment	
of US\$27,500.00	Due on or about 30 September, 1989 with completion of carport.
Third payment	
of US\$27,500.00	Due on completion or near completion of pool and apartment.





- [24] Despite the considerable volume of evidence given by Mr. Taylor on his dealings with this matter and the not too much less evidence by the defendant it was difficult to gather therefrom how these parties continued in the way they did. The answer may be found in the part played by Nancy Erb. It would appear that by the parties continued reliance on whatever Nancy Erb was doing they disregarded what their true responsibilities were under the agreement for sale and the building contract which they both signed and presumably set out to execute.
- [25] When the plaintiffs had been unable to come up with the balance of the purchase price due to the defendant on the date set out in the agreement for sale and the defendant had expended moneys under the building contract which moneys were not paid over by the plaintiffs at the due times or at all the defendant sought to deal with the property in a way inconsistent with how he could have dealt with it if the agreement for sale were effective. The defendant was not able to deal with the property as he may have wished and indeed the plaintiffs seemed to have gone into possession of the same as owners. Having therefore taken over the property after paying as much on the purchase price as they did it would appear that the defendant would have been entitled to demand that the plaintiffs complete the contract and pay over the balance of the purchase price.
- [26] Mr. Taylor gave evidence about discussions on how the various arrangements were to be financed. The defendant in his testimony gave the impression that he did not have any discussions with the plaintiffs along the lines spoken of by Mr. Taylor. At any rate the evidence adduced by Mr. Taylor described arrangements that would not have accorded entirely with what appeared in the agreement for sale or the building contract and I could not seek to resolve the matter in the way contended for by the plaintiffs.
- [27] The plaintiffs sought damages as set out in their statement of claim but the evidence adduced has not been such as would justify the court making an award for damages in their favour. It would be difficult for the court to order the defendants, for an instance, to reimburse the plaintiffs for the moneys they expended in getting the land holding licence or to reimburse them for expenses they incurred in visiting Montserrat.
- [28] The plaintiffs also asked the court on the evidence adduced on their behalf to rescind the agreement for sale entered into by them and the defendant. It strikes me though that on the basis of the evidence adduced the agreement for sale which was entered between the plaintiffs and the defendant and dated July 1989 would have become void if not on the 15<sup>th</sup> day of August 1989 surely at some other discernible time before the filing of the writ of summons on the 11<sup>th</sup> day of May 1992. It may be wondered whether, in light of the evidence adduced, there was still an extant agreement for sale when the writ was filed.
- [29] The parties continued after the 15<sup>th</sup> August 1989 to treat with one another in such a way as if there was an existing arrangement whereby the plaintiffs would eventually become registered as the proprietors of the property still held by the defendant. I have not however been able to gather from

the evidence what exactly were the terms that may have been agreed to get the title from the defendant over to the plaintiffs after the avoidance of the agreement for sale on the 15<sup>th</sup> August, 1989. If it were intended that something would have arisen out of the building contract to galvanise the transfer from the defendant to the plaintiffs the lack of definition of how and why the building contract was being executed (if it still was being executed) in the light of the plaintiffs not getting themselves into the position of proprietors would be troublesome. There was nothing shown to the court to gainsay that the defendant was effecting works on his own building while he was doing what the plaintiffs seemed to have taken to be an improper execution of the building contract. The plaintiffs treated what the defendant was doing as being under the building contract because as Mr. Taylor testified they thought they had an agreement that the building contract price of \$100,000.00 would have been underwritten by a loan from the Royal Bank of Canada. And they contended that the defendant's execution of the works under the building contract was so bad that it caused them to lose that loan.

[30] Whatever the relationship was between the plaintiffs and the defendant after the 15<sup>th</sup> August 1989 it was not such as would permit the court to regard favourably the plaintiffs' claim for rescission of the agreement for sale. As I have intimated above the agreement for sale would have spent itself already.

[31] The defendant admitted that he received the sum of \$127,500.00 from the plaintiffs being part payment of the purchase price for the property at Foxe's Bay. Now that the plaintiffs have come to the court for rescission of the agreement for sale under which they paid the said sum of \$127,500.00 to the defendant they are asking the court to order the repayment to them of that amount.

[32] The agreement for sale provided that if the plaintiffs were unable to obtain the requisite landholding licence and an acceptable mortgage the agreement would become void and the deposit would be returned to them. The plaintiffs did manage to get the land holding licence for the purchase but were not able to secure an acceptable mortgage to complete the purchase. In those circumstances it seems to me that the agreement would have become void and the defendant would have had to return the deposit; and it was represented to the court by counsel for the defendant that the repayment of the deposit to the plaintiffs was one of the means of solution that would have been acceptable to the defendant. The defendant in the counterclaim he filed however sought an order from the court to give him leave to sell the property outside the agreement for sale so that he might be able to repay the plaintiffs out of the proceeds of such sale.

[33] There is no doubt therefore that the plaintiffs would be entitled in the circumstances to recover their moneys and I would make the order that the defendant pay over to the plaintiffs the sum of \$127,500.00.

[34] The plaintiffs have also asked the court to declare that they are entitled to a lien on the said property of the defendant to secure the payment to them of the said sum ordered to be repaid to them. From what appears in the defendant's counterclaim it would seem that he would have had

no difficulty in accepting that the plaintiffs should be able to look to the said property or a sale thereof for the recovery of the sums due to them from him. In the circumstances I shall make the order that the said property of the defendant is to stand charged with the sum of \$127,500.00 in favour of the plaintiffs. Such charge will not act as a bar to the sale of the property by the defendant but the proceeds of any sale thereof must be used to discharge the debt to the plaintiffs. This arrangement will also take care of what the defendant sought in his counterclaim.

[35] In the result I give judgment to the plaintiffs against the defendant and order the defendant to pay to the plaintiffs the sum of \$127,500.00 together with interest thereon at the rate of 5% per annum from the 4<sup>th</sup> August 1992 until payment in full. The other claim of the plaintiffs for damages is dismissed. The plaintiffs will have their costs against the defendant which costs shall be taxed if not agreed.

[36] This judgment has been delivered long after the parties would have expected the same to have been and after a longer time than litigants should be expected to wait for their judgments. And the court rues what the delay may have caused.

[37] I completed the taking of the evidence in this matter during the dislocation caused by the eruption of the volcano. Shortly after I completed the hearing of this and some other matters but before I was able to complete and deliver the judgment herein I moved to St. Kitts firstly on a temporary assignment and then immediately thereafter permanently assigned. I never returned to Montserrat.

[38] The notes I made and the other records of this case were eventually shipped to me in St. Kitts. By that time however the Court of Appeal had ruled that delivery of a judgment by a judge more than a year after he heard the last of the evidence was injudicious. That development indicated that the matter would have had to be heard again by a different judge. In December 2000 however the Judicial Committee of the Privy Council indicated that the delivery of a judgment a year after the last witness had been heard was not ipso facto injudicious. Hence I recovered the notes and other records of this case and studied them diligently so as to produce the above judgment. I am satisfied that I have dealt with all the issues that needed to be dealt with after the careful study of all the notes and recollection of such things as I needed to recall being helped by the type of notes I made. I am confident that the long delay has not affected the quality of the decision.

Dated the                      day of                      2001.

**Neville L Smith**  
**Judge**