46/85

No.13 of 1984

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

BETWEEN:

SAMUEL AYOUNG CHEE — Appellant (Defendant)

- and -

DIARAM RAMLAKHAN — Respondent (Plaintiff)

RECORD OF PROCEEDINGS

A.L. BRYDEN & WILLIAMS,
20 Old Queen Street,
London, SW1H 9HU

Solicitors for the Appellant

PHILIP CONWAY THOMAS & CO.,
39 Buckingham Gate,
London SW1E 6HB

Solicitors for the Respondent

No.13 of 1984

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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- and -

DIARAM RAMLAKHAN — Respondent (Plaintiff)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

E X H I B I T S

Exhibit mark	Description of Document	Date	Page No.
	PLAINTIFF'S EXHIBITS		
D.R.1.	Deed of Lease	8th October 1973	67-71
D.R.2.	Copy letter Wong and Sanquinette to Ayoung Chee	29th June 1977	72

DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL BUT NOT REPRODUCED

No.	Description of Document	Date
	IN THE COURT OF APPEAL OF TRINIDAD AND TOBAGO	
1	Writ of Possession	5th January 1981
2	Order granting conditional leave to appeal to the Privy Council	7th February 1983
3	Various certificates signed by the Registrar of the Supreme Court of Judicature	8th March 1984

No.1

WRIT OF SUMMONS

Wong & Sanguinette

Writ of Summons

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

No. 2596 of 1977.

Between

DIARAM RAMLAKHAN

Plaintiff

And

SAMUEL AYOUNG CHEE

Defendant

****

THE STATE OF TRINIDAD AND TOBAGO

TO SAMUEL AYOUNG CHEE,
68, First Avenue,
Mount Lambert.

In the High Court of Justice

No.1 Writ of Summons

29th September 1977

You are hereby commanded that within eight days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of

DIARAM RAMLAKHAN

and take notice that in default of your so doing, the plaintiff may proceed therein, and judgment may be given in your absence.

WITNESS: The Honourable Sir Isaac Hyatali,
Chief Justice of our said Court at Port-of-Spain, in the said Island of Trinidad,
this 29th day of September, 1977.

Note: This writ may not be served later than 12 Calender months beginning with the above date unless renewed by order of the Court. The defendant may enter an appearance in person or by a solicitor either (1) by handing in the appearance forms, duly

completed, at the Red House, Port-of-Spain or (2) by sending them to that office by post.

If the defendant enters an appearance, then unless a summons for judgment is served on him in the meantime, he must also serve a defence on the solicitor for the plaintiff within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against him without notice.

The plaintiff's claim is for:-

1. Specific performance of an agreement contained in Deed of Lease dated the 8th day of October, 1973. (registered as No. 14159 of 1973) and made between the defendant of the one part and the plaintiff of the other part whereby the defendant agreed to sell to the plaintiff that parcel of land situate at Mount Lambert in the Ward of St. Anns in the Island of Trinidad comprising 5,880 Superficial feet known as No. 66 First Avenue, Mount Lambert and abutting on the North upon First Avenue Mount Lambert on the South upon No. 1 Mount Lambert Circular Road on the East upon Mount Lambert Circular Road and on the West upon No. 68 First Avenue Mount Lambert together with the buildings thereon and the appurtenances thereto belonging.

2. Damages.

3. Costs.

4. Further and other relief.

This Writ was issued by Messrs. WONG & SANGUINETTE of No. 28 St. Vincent Street, Port-of-Spain, Trinidad, solicitors for the said plaintiff whose address is 66 First Avenue, Mount Lambert, Shop Priprietor.

Wong & Sanguinette,
Plaintiff's Solicitors.

This writ was served by me at .....
on the Defendant .....
on .....the.....day of .....197 .

Indorsed the .....day of.....197 .
(Signed) .....
(Address) .....

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

No. 2596 of 1977.

Between

DIARAM RAMLAKHAN — Plaintiff

And

SAMUEL AYOUNG CHEE — Defendant

****

STATEMENT OF CLAIM

1. By deed dated the 8th October, 1973, registered as No. 14159 of 1973 and made between the defendant of the one part and the plaintiff of the other part the defendant demised to the plaintiff for the term of 4 years from the 1st November, 1973, All and Singular the Two-storey building and the surrounding yard used and occupied in connection therewith comprised in the freehold property described in the Schedule thereto being All and Singular that parcel of land situate at Mount Lambert in the Ward of St. Anns in Trinidad comprising 5,880 Superficial Feet known as No. 66 First Avenue, Mount Lambert and abutting on the North upon First Avenue Mount Lambert on the South upon No. 1 Mount Lambert Circular Road on the East upon Mount Lambert Circular Road and on the West upon No. 68 First Avenue Mount Lambert together with the buildings thereon and the appurtenances thereto belonging, at the rent and subject to the terms and conditions therein contained.

2. In and by the said deed the plaintiff was given the option at any time before the expiration of the said term of 4 years to purchase the freehold property described in the Schedule to the said deed subject to a good title and free from encumbrances for the sum of $120,000.00 on condition that the said sum be paid in full before the said term of 4 years and upon payment of all arrears of rent (if any) when the defendant shall forthwith execute a deed of conveyance vesting the said freehold property in the plaintiff in fee simple or as he shall direct.

3. By letter dated 29th June, 1977, written by the plaintiff's Solicitors to the defendant the plaintiff notified the defendant that he the plaintiff was desirous of exercising the option to purchase the said property contained in the said deed for the sum therein stated.

In the High Court of Justice

No.2 Statement of Claim 10th October 1977

(continued)

4. Further in and by the said letter the plaintiff informed the defendant that he the plaintiff was ready and willing to complete the said purchase and requested the defendant to call at the office of the plaintiff's Solicitors at any time to execute the deed of conveyance.

5. The plaintiff has at all material times and is now ready and willing to fulfil all his obligations under the option contained in the said deed.

6. Notwithstanding the request contained in the said letter the defendant has neglected and/or refused to complete the said purchase.

The plaintiff therefore claims:-

1. Specific performance of the said Agreement.

2. Damages.

3. Costs.

4. Further and other relief.

G. E. Wellington,
Of Counsel.

Delivered this 10th day of October, 1977 by Messrs. Wong & Sanguinette, of No. 28 St. Vincent Street, Port-of-Spain, Solicitors for the Plaintiff.

Wong & Sanguinette.
Plaintiff's Solicitors.

To: Mr. Noel James Chang,
35 Abercromby Street,
Port-of-Spain,
Defendant's Solicitor.

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

No. 2596 of 1977.

Between

DIARAM RAMLAKHAN — Plaintiff

And

SAMUEL AYOUNG CHEE — Defendant

****

DEFENCE AND COUNTERCLAIM

1. The defendant admits paragraphs 1 to 4 of the Statement of Claim.

2. The defendant denies paragraphs 5 and 6 of the Statement of Claim herein.

3. The defendant says that in and by the said Deed of Lease he agreed to sell to the plaintiff a parcel of land comprising 5,880 Superficial Feet together with the buildings thereon situate at Mount Lambert and more particularly described in the said Deed of Lease and shown coloured pink on the plan hereto attached and marked "A".

4. The defendant has been and is always prepared to convey the said 5,880 Superficial Feet as shown on the said plan which the plaintiff has refused to accept insisting that the defendant conveys to him not only the 5,880 Superficial Feet but also a strip of land shown on the Western boundary of the said parcel of land.

5. Sometime in the month of October, 1977, the plaintiff in breach of the said Lease parted with possession of the said premises to Samdaye Ramlakhan without the consent in writing of the defendant thereby rendering himself unable to exercise the option to purchase.

6. Save as to any admissions herein made the defendant denies each and every allegation and/or implication of fact in the Statement of Claim contained as if the same were herein set forth and traversed seriatim.

In the High Court of Justice

No.3
Defence and Counterclaim
1st February 1978

(continued)

COUNTERCLAIM

7. The defendant repeates paragraph 1 of the plaintiff's Statement of Claim and says that the plaintiff agreed to pay the defendant the yearly rent of $7,200.00 for the demised premises payable by equal monthly instalments of $600.00 in advance on the first of each month.

8. The plaintiff had made default in the payment of the sum of $1,800.00 arrears of rent for the said demised premises for the months of August, September and October, 1977.

9. The said Lease expired on the 1st November, 1977, by effluxion of time and the plaintiff has unlawfully remained and has threatened to remain in unlawful possession of the said demised premises.

10. The demised premises is not subject to the Rent Restriction Ordinance Chapter 27 No. 18 of the Laws of Trinidad and Tobago.

11. The defendant is entitled to possession of the said demised premises.

12. The defendant repeats paragraphs 4 and 5 of the Defence and Counterclaims a declaration that the option granted as alleged by the plaintiff, has been rescinded by the plaintiff and the same is of no legal effect and no binding on the defendant and/or that the option is unexercisable by the plaintiff because of the breach complained of.

13. The defendant counterclaims:-

(a) Possession of the demised premises.

(b) Arrears of rent in the sum of $1,800.00.

(c) Mesne profits from the 1st day of November, 1977 at the rate of $600.00 per month to the date of possession.

(d) A declaration that the option granted as alleged has been rescinded by the plaintiff and is of no legal effect and/or that the option is unexercisable by the plaintiff because of the breach complained of.

(e) Recission of the option for sale.

(f) Such further and other relief as the nature of the case may deem necessary.

(g) Costs.

Winston Gaspard,
Of Counsel.

Delivered this 1st day of February, 1978, by Noel James Chang of No. 35 Abercromby Street, Port-of-Spain. (continued)

Noel J. Chang.
Defendant's Solicitor.

To: Messrs. Wong & Sanguinette,
Solicitors &c.,
28 St. Vincent Street,
Port-of-Spain,
Plaintiff's Solicitors.

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

In the High Court of Justice

No. 2596 of 1977.

Between

DIARAM RAMLAKHAN — Plaintiff

And

SAMUEL AYOUNG CHEE — Defendant

No.4
Reply and Defence to Counter-claim
13th February 1978

****

REPLY

1. The plaintiff joins issue with the defendant on his Defence except in so far as the same consists of admissions.

DEFENCE TO COUNTERCLAIM

2. The plaintiff denies that he has failed to pay rent as alleged in paragraph 8 of the Counterclaim or that any rent is in arrears and repeats paragraphs 3 and 4 of the Statement of Claim.

3. The plaintiff remained in possession of the said premises after he had exercised the option contained in the said lease and remains on by virtue of the exercise of that right in accordance with the terms of the said Deed of Lease.

4. The plaintiff denies that the said premises were ever described by reference to any plan and will refer to the said Deed of Lease for its full terms and effect.

5. The plaintiff denies that he has at any time parted with possession of the said premises. If (which is denied) the plaintiff parted with possession of the said premises this took place after he had exercised his option in accordance with the terms of the said Deed of Lease.

G. E. Wellington,
Of Counsel.

Delivered this 13th day of February, 1978, by Messrs. Wong & Sanguinette, of No. 28 St. Vincent Street, Port-of-Spain, Solicitors for the plaintiff.

Wong & Sanguinette,
Plaintiff's Solicitors.

To: Mr. Noel J. Chang,
35 Abercromby Street,
Port-of-Spain,
Defendant's Solicitor.

In the High Court of Justice

No. 5

JUDGE'S NOTES OF EVIDENCE

No.5
Judge's Notes of Evidence 17th-18th November 1980

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No.2596 of 1977

Between

DIARAM RAMLAKHAN Plaintiff

And

AYOUNG CHEE Defendant

******

Before The Honourable
Mr. Justice John A.Brathwaite

Wellington for the Plaintiff

Gaspard for the Defendant

NOTES OF EVIDENCE

Wellington opens the case for the plaintiff; refers to the lease and in particular to the clause containing the option for the purchase of the premises the subject matter of the action; states all allegations in the Statement of Claim admitted by the Defence and draws the Court's attention to the Western boundary of the premises.

Plaintiff's Evidence

No. 6

EVIDENCE OF DIARAM RAMLAKHAN

No.6
Diaram Ramlakhan Examination 17th November 1980

Diaram Ramlakhan sworn on the Gita states:

I live at 66 First Avenue, Mount Lambert. By a deed dated 8/10/73 made between myself and the Defendant, I leased lot 66 from the defendant. Deed put in and marked D.R.1. The lease contained an option to purchase the premises for the sum of $120,000.00. In early June 1977 I approached the defendant and I told him that I was ready to buy the property. He said that he was going to Canada and that on his return he would see about it. Before he left I went to my Solicitors (Wong and Sanguinette) and I gave instructions to write the

defendant. (By consent copy of the letter put in and marked D.R.2). I next say Ayoung Chee in August September. I again approached him on the question of the property and he raised the question of the boundary wall on the Western side. This wall is bounding lots 66 and 68 (it divides off 66 and 68). He asked me to remove the wall two to three feet from where it was standing. I said I would have to consult my Solicitor. My main building on lot 66 measures 30 feet by 60 feet. Extending to the West side from the main building there is a concrete shed - a storeroom stretching from the main building to the boundary wall - 10 by 26 feet. Continuing along the concrete to a galvanized roofing. From the time I leased it was there. I know one Sooknanan. It was not until he came back from Canada that I spoke to him about the wall. At the time of my letter I had made up my mind to buy the property. I gave instructions to my Solicitors to proceed with it. The sale has not been completed. I have at no time parted with the possession of the premises. At no time before August 1977 did the question of removing the boundary wall arise between me and the defendant.

Cross-Examination Gaspard

To Gaspard:

I have a wife Samdaye who lives with me. I carry on a business which is licensed in my wife's name - a spirit retailer's business. I did not inform Mr. Ayoung Chee that my wife was carrying on the business I expected to purchase 5,880 superficial square feet. A survey was carried out by one Paul Williams. I never got a copy of the plans. The defendant did tell me that all he was surveying was 5,880 square feet. The defendant lives at No.68. The marks put down by the surveyor do not go up to the wall. I never agreed that the wall be brought up to coincide with the surveyor's marks. He made the suggestion and I told him that I did not agree to have the wall moved up. The premises are at a corner.

Part heard and stood down.

2596/77 Resumed:

Diaram Ramlakhan: still on oath:

To Wellington:

My wife carries on business downstairs. She

started on the 17/11/77. Prior to that date I was in charge.

Q. What were you expecting when you exercised the option?

(Court intervenes and asks the witness not to answer the question because it was one of the main issues of law whether or not the option was properly exercised or not. After some argument the Court decides to permit the witness to answer the question for what it was worth)

A. I was expecting up to the wall because that was what I was occupying. Nothing was said about removing the wall when I first leased it.

No. 7

EVIDENCE OF SOOKNANAN

Sooknanan, Sworn the Gita states:

I live at Scott-Bushe Street, Port-of-Spain. I know the plaintiff. I also know the defendant. In June 1977 I saw the defendant and served him with a letter from Mr. Wong on 29/6/77. He took the letter and opened it and read it. He told me to tell Mr. Wong that he is going to Canada and that when he returns he will see him and that I did. Sometime in late August I saw Ayoung Chee at Mr. Wong's office. Mr. Wong told him about the sale to Mr. Ramlakhan and he said that he could not see himself selling that property for that price. Mr. Wong told him that according to the lease Mr. Ramlakhan had an option in the lease to purchase same. His reply was that he would have to see his lawyer and discuss it and he left. Nothing else was said - nothing about the removal of the wall.

To Gaspard:

This might have been late August or early September. There was a survey made on a certain day then I heard that a wall should be removed. I was present. I saw where marks were put down by Mr. Paul Williams about 3 feet 4 inches on the North point and

2 feet on the South point, that is to say the North-western and South-western boundaries. Ramlakhan did not agree to the removal of the wall. I know the land was 5,880 square feet in the lease. The survey took place on the 3/11/77.

No. 8

EVIDENCE OF LENNOX ARTHUR WONG

Lennox Arthur Wong, sworn on the Bible states:

I am a Solicitor of the Supreme Court of Trinidad and Tobabo. My address is 11 Queen's Park West. Sometime in June 1977, the plaintiff approached me and as a result of instructions I wrote a letter to the defendant. This letter now shown to (D.R.2) is that letter.

Sooknanan delivered the letter. The defendant came to see me a month or two after the letter was written. Mr. Ayoung Chee told me that he could no longer sell the property at that price and that the price was too low as values of properties had risen. I told him that he had given an option to purchase at a specified price. He said in spite he could not sell for that sum. I suggested that he see his Counsel as Counsel had prepared the deed of lease.

To Gaspard:

After the letter he came in to see me once.

Case for the plaintiff closed

In the High Court of Justice

Defendant's Evidence

No. 9

EVIDENCE OF PAUL WILLIAMS

Paul Williams, sworn on the Bible states:

No.9
Paul Williams
Examination
17th November 1980

I live at Valsayn. I am a licensed Surveyor. I received instructions from the defendant in 1977 to survey land at Mount Lambert. I carried out the survey in the presence of the defendant and others. I made a plan of survey. Plan put in and marked P.W.1. It shows survey of parcel 66 containing 5,880 superficial feet. There is a wall to the West of the words "Spike Put". The wall goes the whole length of the plot. 1.4 feet at the Southern end and 2 feet at the Northern end. The extra area comprised 190 square feet. The total area of the lot came to 6,070 square feet.

Cross-Examined Wellington

To Wellington:

I had to establish the boundary of two roads and the Southern boundary. There was a wall West of the Western boundary. I also surveyed lot 68. The wall ran the whole length of the boundary. The wall was there. The roof was over-head. The area of Lot 68 I know. I have it with me. I believe I had an overall map of Aranguez Estate.

Defendant's Evidence

No. 10

EVIDENCE OF SAMUEL AYOUNG CHEE

No.10
Samuel Ayoung Chee
Examination
17th November 1980

Samuel Ayoung Chee, sworn on the Bible states:

I live at 68 1st Avenue, Mount Lambert. The premises at 66 belong to me. I erected the building in 1956. I leased the premises at 66 to the plaintiff and I have him an option to purchase 5,880 superficial square feet of the land and that was what I was prepared to sell to him. I got a month's rent from him in June 1977 and then I told him that I was going to Canada. I asked him to keep an eye on my premises. I got a letter stating his intention to buy. I told him I had no time as I was leaving, so when I came back I would see Mr. Wong. A day after I came back I went to see

Mr. Wong and he showed me a deed about intention to buy the property. I told Mr. Wong before we go further, we have to settle the boundary on the Western side. Wong told me that I would have to see the plaintiff - straighten that out. I saw the plaintiff and his wife. I showed them a deed with the boundaries and they agreed that they would put up a wall in accordance with the measurements and that he would hire a contractor and that we would share the expenses. Next day he brought Mr. Sooknanan and he took the measurements according to my dictation, and advised the plaintiff not to build the wall. Sooknanan said I leased the whole property to him and he was to take exactly what he occupied. He wanted all or nothing at all. I went back to Mr. Wong and told him what transpired and asked him to talk to them about how much I agreed to sell and he promised to see about it.

A few days later I went back to Mr. Wong's office and he said that the plaintiff had left plain and strict instructions with him that no discussions, no settlement - they want everything as it is. Either sign the deed or go to Court for it. After I left the office.

Cross-- Examined Wellington

To Wellington:

I leased him lot 66. I bought lot 68 in 1971 and 66 in 1973. I leased to the plaintiff in 1973. I look at D.R.1 - lot 66 - 1st Avenue bounded on the West by lot 68 together with the buildings thereon. I look at clause 4. That parcel of land was the whole length of both lots 66 and 68 and the wall was there before I leased it to Mr. Ramlakhan. There was a concrete structure the roof of which extended right to the wall for about 26 by 10 feet. I used it as a garage and the extension which went right up to the wall and that was so when I leased it to him. I came from Canada in early September. I went to see Wong and he showed me the deed which he had prepared. I surveyed in November. I knew before that it was more land than 5,880 square feet. When I was building the house I knew it was more than 5,880 square feet. This was in 1956. I extended the garage up to the wall. I saw Mr. Wong on more than one occasion in the presence of Sooknanan. In November 1977 I carried out the survey.

In the High Court of Justice

Case for the defendant closed

No. 11

No.11 Submission of Gaspard 17th November 1980

SUBMISSION OF GASPARD

Gaspard refers to the following authorities:

Hill and Redman, 16th Edition, page 157 et seq:

Dawson v Dawson 59 E.R., page 137.

Ranelagh v Milton 62 E.R., page 627 at page 628

Brooke v Garrod 69 E.R., page 1252

Part heard and adjourned 17th November, 1980.

17th November, 1980

2596/77

Wellington for plaintiff
Gaspard for defendant
Gaspard unavailable...Adjourned 18th November, 1980.

18th November, 1980

2596/77

Appearances as before

Gaspard continues address; Whenever stated how option to be exercised, has to be in the terms of the option. (See Clause (4)(4) of the lease. Must be strictly observed and exercised. Whole case fails. Plaintiff has not paid any money as rent after July, 1977. Premises erected after 1954 outside the purview of the Rent Restriction Ordinance. Lease expired - no rent paid - ask for dismissal of the plaintiff's claim and for judgment on the counter-claim for possession, $1,080.00, arrears of rent, mesne profits at the rate of $600.00 per month from the 1st November, 1977, to the date of delivery of possession.

No.12 Submission of Wellington 18th November 1980

No. 12

SUBMISSION OF WELLINGTON

Wellington replies:

(1) Option creates an interest in the land which vests on the exercise of the option by the plaintiff and the payment of the money s. 75, p.111, Hill and Redman, 15th Edition. Condition precedent to vesting of property.

(2) How is option exercisable? Notice in writing - implies - s.77, p.143, 15th Edition, Hill and Redman.

(3) Effect of exercise of option; relationship of vendor and purchaser. s.78 p.143 of Hill and Redman (15th Edition). Thereafter vendor has only interest in money. Purchaser has interest in the land.

See Halsbury's Laws 3rd Ed., Vol.14 p.583, s.1083.

(4) Form of option in deed of lease. Clause 4(4).

(5) See letter of 29/6/77. Normal conveyancing practice. No particular form necessary or no mystery.

(6) Refers to:

(a) Cockwell v Romford Steel Laundry 4 All E.R. (1939) page 372. See p.373, letters F to H et seq., p.374 letters B to E, p.375, letter V.P. 376, letters A to H. Submits that letter D.R.2 constitutes a valid exercise of the option.

(b) Dawson v Bawson (sic) 1837 E.R. Vol.59 p.137. (Time of the essence - own note - payment of the essence).

(c) Ranelagh v Milton 62 E.R. p.627.

(d) Parkin v Phoold 1852, 16 Bevan Reports p.59 and 16 and 16 Vict. Ch. 86 s.61.

(e) Brooke and Garrod, 69 E.R. p.1252 at p.1254 bottom of page.

(f) Mills v Harewood 1877 6 Ch. 196 at p.200.
N.B. Equity rids itself of the shackles of the Common Law. (Own note. Distinguish from the present case and from Cockwell's case above).

(g) Doe d. Gray v Stanion (1836) 1 M & W 695.

(7) Condition only applies to the legal vesting of the title to the land by way of conveyance.

(8) The facts of the case show that there was an unreasonable delay on the part of the defendant to make his claim for possession.

(9) Look at the pleadings. There is no mention of the condition precedent in the Defence. See Annual Practice, 1979, Rule 10, Order 18.

(10) Court should consider whether the defendant by his conduct waived the obligation of the plaintiff to fulfil the terms of the option. Refers to Brooke v. Garrod (cit. supra) p. 1254.

Doctrine of Waiver. (Own Note - No.86 pleading of waiver).

(11) Refers to Fry, Specific Performance 6th Edn. p.567 s. 1213 and p.572 s.1229, and to Re Fawcett v Holmes 42 Ch. D. 1889. p.150, Esher M.R. p.155 and p.156. See also Spry, Equitable Remedies p.268 to p.270. Expected defendant to come to Court and ask for Specific Performance - substantially able to give the plaintiff what he has contracted to sell on terms of option once the option was exercised.

Adjourned 25th November, 1980 for decision.

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

No. 2596 of 1977.

Between

DIARAM RAMLAKHAN — Plaintiff

And

SAMUEL AYOUNG CHEE — Defendant

****

Before The Honourable
Mr. Justice John Brathwaite.

Wellington for the Plaintiff
Gaspard for the Defendant

****

JUDGMENT

****

By a deed of lease dated the 8th of October, 1973, the defendant demised to the plaintiff a parcel of land with the buildings thereon and the appurtenances thereto belonging for a term of four (4) years.

Clause 4 (4) of the deed of lease reads thus:

"4. Provided always and it is hereby expressly agreed and declared as follows:

(1) If the monthly payments of the rent hereby reserved or any part thereof shall be unpaid for 21 days after becoming payable (whether formally demanded or not) or if any covenant on the Tenant's part herein contained shall not be performed or observed or if the Tenant shall become bankrupt or, if an assign of the Tenant a company, shall go into liquidation then and in any of the said case it shall be lawful for the Landlord at any time thereafter to re-enter the demised premises or

any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the right of action of the Landlord in respect of any breach of the Tenant's covenants herein contained.

(2) If the demised premises or any part thereof shall at any time during the term hereby created be destroyed or damaged by fire or earthquake so as to be rendered unfit for occupation by the Tenant then and in such case the rent hereby reserved or a proportionate part thereof according to the nature and extent of the damage shall be suspended until the demised premises or the portion thereof so destroyed or damaged shall have been rendered fit for occupation.

(3) The Tenant shall be entitled to determine the present demise at the end of any month by giving SIX (6) MONTHS' notice in writing to the Landlord of his intention to do so (or in lieu of notice by paying to the Landlord SIX (6) MONTHS' additional rent together with any rent then owing) and upon the expiration of such notice or the payment of such additional rent, the present demise and everything herein contained shall cease and be void but without prejudice to the right and remedies of either party against the other in respect of any antecedent claim of breach of covenant.

(4) At any time before the expiration of the term of FOUR (4) years hereby created the Tenant shall be entitled to purchase the freehold property described in the SCHEDULE hereto subject to good title and free from encumbrances for the sum of ONE HUNDRED AND TWENTY THOUSAND DOLLARS ($120,000.00) and on condition that the said sum shall be paid in full by the Tenant to the Landlord before the expiration of the term of FOUR (4) YEARS hereby created: (emphasis added) and upon payment by the Tenant as aforesaid of the PURCHASE PRICE as well as all arrears of rent (if any), the Landlord shall forthwith execute a Deed of Conveyance vesting the said freehold property in the Tenant in fee simple or as he shall direct.

The Schedule to the deed describes the freehold property as follows:-

"ALL AND SINGULAR that parcel of land

situate at Mount Lambert in the Ward of St. Anns in Trinidad and Tobago comprising 5,880 Superficial Feet known as No. 66 FIRST AVENUE - MOUNT LAMBERT and abutting on the North upon First Avenue Mount Lambert on the South upon No. 1 Mount Lambert Circular Road on the East by Mount Lambert Circular Road and on the West upon No. 68 First Avenue Mount Lambert TOGETHER with the buildings thereon and the appurteanances thereto belonging."

On the 29th of June, 1977, the plaintiff's Solicitor wrote the following letter to the defendant:

"29th June, 1977

Mr. Samuel Ayoung Chee,
68 First Avenue,
Mount Lambert,
San Juan.

Dear Sir,

Re: No. 66 First Avenue Mount Lambert leased to Diaram Ramlakhan by lease dated the 8/10/73 registered as No. 14159 of 1973.

We are instructed by our client Diaram Ramlakhan the lessee in the above mentioned lease to notify you that he is desirous of exercising the option to purchase the above numbered property contained in the said deed of lease for the sum therein stated.

Kindly note that our client is ready and willing to complete the said purchase and we would be glad if you will call at our office at any time to execute the deed of conveyance.

We may mentioned that after the expiration of the month of July, 1977, no further rents will be paid under the deed of lease.

Yours faithfully,
Wong & Sanguinette."

This is the text of the plaintiff's Statement of Claim:

"1. By deed dated the 8th October, 1973 registered as No. 14159 of 1973 and made between the Defendant of the one part and the Plaintiff of the other part the Defendant demised to the

Plaintiff for the term of 4 years from the 1st November, 1973, All and Singular the two-storey building and the surrounding yard used and occupied in connection therewith comprised in the freehold property described in the Schedule thereto being All and Singular that parcel of land situate at Mount Lambert in the Ward of St. Anns in Trinidad comprising 5,880 Superficial Feet known as No. 66 First Avenue, Mount Lambert and abutting on the North upon First Avenue Mount Lambert on the South upon No. 1 Mount Lambert Circular Road on the East upon Mount Lambert Circular Road on the West upon No. 68 First Avenue Mount Lambert together with the buildings thereon and the appurtenances thereto belonging at the rent and subject to the terms and conditions therein contained.

2. In and by the said deed the Plaintiff was given the option at any time before the expiration of the said term of 4 years to purchase athe freehold property described in the Schedule to the said deed subject to a good title and free from encumbrances for the sum of $120,000.00 on condition that the said sum be paid in full before the said term of 4 years and upon payment of all arrears of rent (if any) when the Defendant shall forthwith execute a deed of conveyance vesting the said freehold property in the Plaintiff in fee simple or as he shall direct.

3. By letter dated 29th June, 1977, written by the Plaintiff's Solicitors to the Defendant the Plaintiff notified the Defendant that he the Plaintiff was desirous of exercising the option to purchase the said property contained in the said deed for the sum therein stated.

4. Further in and by the said letter the Plaintiff informed the Defendant that he the Plaintiff was ready and willing to complete the said purchase and requested the Defendant to call at the office of the Plaintiff's Solicitors at any time to execute the deed of conveyance.

5. The Plaintiff has at all material times and is now ready and willing to fulfil all his obligations under the option contained in the said deed.

6. Notwithstanding the request contained in the said letter the Defendant has neglected

and/or refused to complete the said purchase.

The Plaintiff therefore claims:-

1. Specific performance of the said agreement.

2. Damages.

3. Costs.

4. Further and other relief.

G. E. Wellington
Of Counsel."

Suffice it to say at this stage, that the evidence given by and on behalf of the Plaintiff substantially supported the allegations set out in his Statement of Claim and the Defendant admits in his Defence the said allegations.

The principal question which falls to be resolved in this action is whether by the letter set out above the plaintiff has exercised the option to purchase the property referred to above to the extent that the relationship of vendor and purchaser was established between himself and the defendant. If this relationship was established it seems to me that the plaintiff is entitled to the relief for which he prays. If this relationship is not established, it would appear, subject to what I have to state later in this judgment, that the defendant must be successful in his counterclaim for possession and certain other reliefs claimed by him. As I see it, the most convenient method of dealing with the question is to embark upon an analysis of clause 4 (4) of the deed of lease in order to arrive at a proper interpretation of the intentions of the parties to the deed. Perhaps a breakdown of the clause into its several phrases may assist.

(a) "At any time before the expiration of the term of Four (4) years hereby created ...."

The term having commenced on the 8th of October, 1973, the latest date on which the plaintiff could have exercised the option would have been the 8th of October, 1977;

(b) "The Tenant shall be entitled to purchase the freehold property described in the SCHEDULE hereto:

(i) Subject to good title and free from encumbrances;

(ii) For the sum of ONE HUNDRED AND TWENTY THOUSAND DOLLARS;

(iii) AND on condition that the said sum shall be paid in full by the Tenant to the Landlord before the expiration of the term of FOUR (4) YEARS hereby created. (Emphasis added)

To my way of thinking, this statement put it beyond any preadventure that the plaintiff's entitlement to purchase demended upon the defendant supplying a good unencumbered title and on the payment in full of the purchase price of $120,000.00 before the 8th of October, 1977. To put it another way the plaintiff would not have been entitled to purchase the property in question as of right if he did not before the 8th of October, 1977, pay to the defendant the sum of $120,000.00. It seems as simple as that to me.

(c) and upon payment by the Tenant as aforesaid of the PURCHASE PRICE as well as all arrears of rent (if any), the Landlord shall forthwith execute a Deed of Conveyance vesting the said freehold property in the Tenant in fee simple or as he shall direct.

Clearly all this part of the clause does is to indicate the circumstances in which the Landlord would be obliged to vest legally the property in the Tenant.

Now it seems that the plaintiff was relying on the letter dated 29th of June, 1977, which has been set out in extenso above to establish that he had exercised the option under the relevant sub-clause of the lease and that by so doing the relationship of vendor and purchaser had come into legal existence. (See paragraphs 3 to 6 of the plaintiff's Statement of Claim supra).

Counsel for the defendant in his closing address emphasised that the relationship of vendor and purchaser could not possibly arise until the plaintiff had paid to the defendant the sum of $120,000.00 before the date specified in the lease. Or, as I put it above the plaintiff's entitlement to purchase the property depended upon, inter alia, the payment in full of the agreed purchase price. And I make it clear that there is no evidence that the plaintiff paid, offered to pay or tendered to the defendant the agreed purchase price. (Emphasis added) As I understand it, the plaintiff was relying on his letter to comprehend the plaintiff's obligation to pay under the terms of the lease. In support of his argument Counsel for the defendant referred first to Hill and Redman, Landlord and Tenant

(Fourteenth Edition) at p. 148, section 85.

> Conditions precedent to exercise of option
> "85 Any matter which by the terms of the option are made conditions precedent to its exercise must be strictly observed. Thus, the notice must be given within a specified period, and if payment of the purchase money at the expiration of the notice is made a condition precedent, the payment must be duly made. But it is not essential that the lessee should have performed all the stipulations of the lease, unless such performance is made a condition precedent. Moreover, strict compliance with the terms of the option may be waived. Provided that at the time when the option is exercised the lease is still current - that is, it has not already been determined for breach of covenant - the exercise of the option creates the relation of vendor and purchaser ....."

Another authority to which Counsel for the defendant referred was the case of Dawson v. Dawson 59 E.R. at p. 137:

This is what the Vice-Chancellor (Sir L. Shadwell) says at p. 138 of that report.

> "The testator had expressed himself thus: "Upon trust to permit my said son Joseph, at any time within three months after my decease, to become the purchaser thereof at or for the price or sum of £4,000."

It is true that the son was allowed the three months to become the purchaser; but, prima facie, the becoming the purchaser would include not only the payment of the purchase money, but also the taking of the conveyance. Then the testator goes on to say:

> "to sell and absolutely convey the same unto my said son Joseph, his heirs and assigns or as he or they shall direct: but should my son Joseph not complete such purchase within three months of my decease."

Now the words, "but should my said son not complete such purchase," are negative words; and the testator, when he used them points at some act to be done, (emphasis added) which he describes as the completion of the purchase. The whole sentence must be taken together; the son was to pay the money, and then the trustees were to convey the house to him. The son ought, at the least, to have placed the money under the control

of the trustees; but no such act was done. (emphasis added) How then can a purchase be said to be completed where there was no conveyance on tne one side and no payment of purchase money on the other? A mere verbal notification of an intention to purchase cannot be said to be a completion of the purchase."

Counsel for the defendant argued that the act of payment of the purchase price had to be performed and that the plaintiff did not pay any part of the purchase money. Consequently the relationship of vendor and purchaser could not arise between the plaintiff and the defendant.

Counsel for the plaintiff, on the other hand, regarded the dictum of the learned Vice-Chancellor as an illustration of the restricted view which Courts of the day (c. 1837) took of the element of time, with respect to the operation of contracts and contended that I ought to see the decision in the case in that light.

I had no doubt in my own mind that in Dawson's case what was of paramount importance was the doing of the act required by the testator. As the Vice-Chancellor puts it; "the testator.....points at some act to be done.....but no such act was done."

In the instant case the entitlement of the plaintiff to purchase clearly depended upon his doing the act of paying the sum of $120,000.00 to the defendant before the expiration of the term of the lease. But this act has not been done either within the prescribed period or at all. Subject to what I have to state below, it appears on the authority of Dawson's case that the plaintiff by failing to do the dact which he agreed to do has forfeited his entitlement to purchase the property described or, as it is put in the headnote (p. 136) of Dawson's case, "he (the plaintiff) could not enforce his option."
Counsel for the defendant next referred to the case of Lord Ramelagh v. Melton 62 E.R. at p. 627.

This is what the Vice-Chancellor (Sir R. T. Kindersley) states at p. 629:

> "On the other hand it is well settled that where there is a contract between the owner of land and another person, then he (the owner) will convey the land to him in fee; the relation of vendor and purchaser does not exist between the parties unless and until the act has been done as specified. (emphasis added) The Court regards it as the case of a condition on the performance of which the party

> performing it is entitled to a certain benefit; but in order to obtain such benefit he must perform the condition strictly."

This passage, Counsel for the defendant maintained, reinforced his argument that "the relation of vendor and purchaser did not exist between the plaintiff and the defendant until the act of paying in full the purchase price was performed as specified in the deed of lease." Counsel for the plaintiff in his turn again expressed the view that what the Court was solely concerned with was the question of time being of the essence of the contract but, in my opinion, Counsel's view is clearly refuted by the following words of the Vice-Chancellor at p. 628 of the above-mentioned report:

> "I apprehend the rule of law applicable to cases like the present is perfectly clear. No doubt, if an owner of land and an intending purchaser enter into a contract constituting between them the relation of vendor and purchaser, and there is a stipulation in the contract that the purchase money shall be paid and the contract completed on a certain day, this Court in ordinary cases has established the principle that time is not of the essence of the contract, and that the circumstances of the day fixed for the payment of the money and the completion of the purchase being past does not entitle either party to refuse to complete."

So that is seen that the Court did consider the question of time being of the essence of the contract. The Court distinguished between the principle applicable to "ordinary cases of purchaser and vendor" and cases where a date has been fixed for the performance of a condition and in this connection had this to say: (at p. 629).

> "Therefore, if there be a day fixed for its (condition) performance, the lapse of that day without its being performed prevents him (the plaintiff) from claiming the benefit. Applying that rule to the present case: if the agreement fixes a day for the payment of the money, then its clear that if that day is past the right to compel a conveyance is lost."

Counsel further referred to the case of Brooks v. Garrod 69 E.R. at p. 1252 where it was held, inter alia, that the purchase money not having been paid within a specified time, the right of pre-emption was lost, the rule being that such a right must be strictly complied with.

In his turn Counsel for the plaintiff relied

mainly on two authorities to show, presumably, that the delivery of the notice contained in the letter of the 29th of June, 1977, had the effect of exercising the option contained in clause 4 (4) of the deed of lease:

The first of these authorities was Mills v. Hayward reported at (1877) 6 Ch. D. at p. 196. In this case, a lease granted to the plaintiff Mills contained a clause in the following terms:

> "Mr. Mills to have the option at any time during the said term to purchase the above premises for £3,500 and such amount as Mr. Austin shall pay for law and other expenses attendant upon the purchase and resale thereof; and upon payment thereof and of the other sums due under this agreement as hereinafter mentioned to Mr. Austin the said term of 10 years and the said rent of £1,000 per annum shall thereupon case and the said Mr. Mills shall thereupon be entitled to an assignment of leases."

It was held by the Court of Appeal, affirming the decision of Hall V.C. on this point, that the giving of notice under the option constituted a binding contract between Mills and the assignee of the reversion, and that the payment of the purchase price was not a condition precedent to the coming into existence of such a contract.

What Counsel did not seem to concede was that in the instant case it was an express condition precedent to the constitution of the contract for sale and purchase between the plaintiff and the defendant that the purchase price be paid. There is the actual form of words used in the instant case:

> "..... the Tenant shall be entitled to purchase the freehold property..... for the sum of ONE HUNDRED AND TWENTY THOUSAND DOLLARS and shall be paid in full by the Tenant to the Landlord before the expiration of the term of FOUR (4) hereby created."

May I put it this way, the authority quoted shows beyond doubt that where the payment of the purchase price is a condition precedent to the constitution of the contract for sale, that money must be paid before the machinery of conveyancing comes into operation. Moreover, whatever the conveyancing practice may be, that is to say, that the vendor execute the deed and

then the purchase money, in a case of this nature the purchase price must be paid well in advance of the preparation of the deed of conveyance, for it is only when this is done that a valid contract for sale comes into existence.

The second authority referred to by Counsel for the plaintiff was the case of Cockwell v. Romford Sanitary Steam Laundry Ltd. reported at (1939) 4 All E.R. at p. 370. I do not propose to do into the facts of this case. The case reviews the law relating to the proper exercise of an option to purchase and at p. 374 this is the question that Luxmore L.J. poses:

> "Is it a condition precedent to the Constitution of any contract for sale and purchase between the plaintiffs and the assignees that the purchase price be paid?

The learned L.J. went on to review the cases of:

(a) Weston v. Collins (1865) 5 New Rep. 345; 30 Digest 475, 1378; 34 L.J. Ch. 353; 12 L.T.4.

(b) Mills v. Haywood (cit-supra).

With respect to (a), after setting out the text of the covenant in the lease under consideration at p. 375 (Letters A and B) Luxmore L.J. says this:

> "The covenant contained provisions imposing on the lessees the liability for the preparation of the abstract, and other matters in connection with the making out of a good title to the lessee's satisfaction, and the assurance of the property to the lessees. It was also expressly provided that the lessees accepted and approved Collins' title; Lord Nestbury held that there was no contract between the parties unless and until the purchase price was paid, and in view of the actual words of the covenant, it is difficult to appreciate how he could have arrived at any other conclusion, for the covenant states in plain terms that it is <u>on payment</u> of the purchase price that the lessor is to sell, a form of words which is totally different from the form of words used in the present case."

I have already commented on the case referred to at (b) above. I do not think it necessary to do so again. The plain legal principle that seems to govern cases in which a question arises as to whether an

option to purchase is included in a lease is properly exercised is that where the option is subject to a condition that the purchase money must be paid before the contract is complete - that money must be paid. If it is not paid in accordance with the terms of the option-clause, then there is no contract - no agreement which could be regarded as binding. If there is no valid contract for sale, obviously equity will not permit a decree of specific performance. This is elementary, I think. Now what I find as a fact is that the plaintiff's Solicitor erred in not enclosing with the letter of the 29th June, 1977, of a cheque for the sum of the purchase price or at least when the defendant came to his office presenting him with the full payment of $120,000.00.

What Mr. Wong said in his evidence was this:

> "The defendant came to see me a month/two after the letter was written. Mr. Ayoung Chee told me that he could no longer sell the property at that price - that price was too low as values of properties had risen. I told him that he had given an option to purchase at a specified price. He said in spite of that he could not sell for that sum. I suggested his seeing his Counsel as Counsel had prepared the deed of lease."

That was the full purport and intent of Mr. Wong's evidence. I accept Mr. Wong's evidence and having done so I must come to the conclusion that Mr. Wong neither paid to the defendant or offered to pay or tendered to the defendant the purchase price agreed upon between the plaintiff and the defendant. There was no evidence led by the plaintiff that he or any other person paid or offered to pay or tendered the amount of the purchase price to the defendant.

"Ready and willing to complete" is one thing, actual payment is obviously another thing.

Counsel for the plaintiff finally referred me to Order 18 rule 7(4) which states:

> "(4) A Statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitute a condition precedent necessary for the case of the party is to be implied in his pleading."

By this reference, I gathered that Counsel was inviting me to hold that implied in his pleading was the fact that the plaintiff had paid, or at least

tendered, the purchase price for the property and that the onus was on the defendant to plead and prove that the purchase money had not been paid. I could not possibly agree with Counsel's suggestion, for the whole essence of the plaintiff's case was based on the validity of a positive contract which I have found did not and indeed does not in law exist.

It is true that nearly all the authorities cited at the trial of this action have resorted to the use of the expression "Condition Precedent." In the rule referred to by Counsel the version seems to have a somewhat more restricted meaning than in the several authorities.

At p. 270 of Volume 1 of the Supreme Court Practice, 1979, under the rubric "Condition Precedent" this is written:

> "Cases constantly occur in which, although everything has happened which would at common law prima facie entitle a man to a certain sum of money, or vest in him a certain right of action, there is yet something more which must be done, or something more which must happen, in the particular case, before he is entitled to sue, either by reason of the provisions of some statute, or because the parties have expressly so agreed; this something more is called a condition precedent. It is not of the essence of such a case of action, but it has been made essential. It is an additional formality superimposed on the common law"..... (Emphasis added)

and at p. 271:

> "But an allegation which is of the essence of the cause of action is not a condition precedent within the meaning of this Rule and must still be pleaded in the Statement of Claim." (Emphasis added)

In the instant case, the relation of vendor and purchaser could not have come into being until the sum of $120,000.00 was paid, tendered or offered by the plaintiff to the defendant. It seems to follow, therefore, that the payment, tender, or offer of this sum by the plaintiff was a sine qua non of the coming into being of the cause of action upon which the plaintiff purported to sue - in other words "the essence of the cause of action."

To may way of thinking, the plaintiff ought to have alleged this fact in his Statement of Claim and it is my opinion that the provisions of Order 18

rule 7(4) do not relieve him of this obligation.

If I am right in all these things, the plaintiff's claim must be dismissed with costs.

I turn now to the defendant's counterclaim.

There can be no doubt that he must succeed on his counterclaim for possession. The term assured by the deed of lease expired on the 7th October, 1977.

The plaintiff must also pay the rent for the months of August, September and for the first seven days of October, 1977, that is to say the sum of $1,340.00.

In addition the plaintiff must pay the sum calculated at the rate of $600.00 per month from the 8th October, 1977, until the day on which the plaintiff gives up possession of the premises.

These orders are clearly consequential upon the dismissal of his claim for specific performance of the agreement contained in clause 4(4) of the deed of lease.

In the event that I am wrong or found to be wrong in my legal findings with respect to the plaintiff's claim, may I say that I accepted the plaintiff's evidence and the evidence of his Solicitor and his witness Sooknanan. Unfortunately their evidence is not nearly sufficient to overcome the legal obstacle that stood in the way of the plaintiff's claim. To put it another way, I have come to the decision to which I have arrived not on the strength of the defendant's Defence but on the legal weakness of the plaintiff's case. I did not accept the account given by the defendant. My view of his account is that having regard to the rising prices of land in Trinidad and Tobago, he wanted to take full advantage of this factor and to that end relied upon the disparity between the area set out in the deed of lease and that found by the surveyor to be occupied by the plaintiff - 190 superficial feet, to set up his defence.

(In other circumstances) This purported Defence would not have succeeded for this reason. On the authority of the case Re: Fawcett and Holmes (1889) 42 Ch.D. I would have been in a position to make an order for specific performance with compensation for the excess 190 superficial feet. As things stand, I am not in such a position.

Having heard argument on the question of costs on the counterclaim, I am of the opinion that the

defendant must bear his own costs of the counterclaim.

Stay of execution 28 days.

Dated this 28th day of November, 1980.

John A. Brathwaite
Judge.

No.14

ORDER

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 2596 of 1977

Between

DIARAM RAMLAKHAN Plaintiff

And

SAMUEL AYOUNG CHEE Defendant

****

Dated the 28th day of November, 1980.
Entered the 9th day of January, 1981.
Before the Honourable Mr. Justice J. Braithwaite.

Upon this Action coming on for trial.

And upon hearing Counsel for the plaintiff and Counsel for the defendant

IT IS THIS DAY ADJUDGED

that the plaintiff's claim be and the same is hereby dismissed with costs

AND IT IS FURTHER ADJUDGED

that the plaintiff do deliver up possession to the defendant of All and Singular that certain piece or parcel of land situate at Mt. Lambert in the Ward of St. Anns in the Island of Trinidad comprising 5,880 superficial feet known as No. 66 First Avenue, Mt. Lambert and abutting on the North upon First Avenue, Mt. Lambert on the South upon No. 1 Mt. Lambert Circular Road on the East upon Mt. Lambert Circular Road and on the West by No. 68 First Avenue, Mt. Lambert, together with the two storey building standing therein

AND IT IS FURTHER ADJUDGED

that the plaintiff do pay to the defendant the sum of $1,340.00, being arrears of rent for the months of August and September and for the first seven days of October, 1977 and mesne profits calculated at the rate of $600.00 per month as from the 8th October, 1977, until delivery up of possession of the above premises

AND IT IS FURTHER ADJUDGED

that there be no order for costs on the Counterclaim of

the defendant

AND IT IS FURTHER ADJUDGED

that there by a stay of execution of this Judgment for a period of 28 days from the date hereof.

C. Chambers,
Deputy Registrar.

No.15

NOTICE OF APPEAL

TRINIDAD AND TOBAGO.

IN THE COURT OF APPEAL

NOTICE OF APPEAL

Civil Appeal No. 127 of 1980.

High Court Action No. 2596 of 1977.

Between

DIARAM RAMLAKHAN — Plaintiff/Appellant

And

SAMUEL AYOUNG CHEE — Defendant/Respondent

******

TAKE NOTICE that the Plaintiff/Appellant being dissatisfied with the whole decision more particularly stated in paragraph 2 hereof of the High Court of Justice, Port-of-Spain, contained on the judgment of the Honourable Mr. Justice Brathwaite dated the 28th November, 1980, in the action No. 2596 of 1977 between the Plaintiff/Appellant and the Defendant/Respondent doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the Appeal seek the relief set out in paragraph 4.

AND the Plaintiff/Appellant further states that the names and addresses including his own of parties directly affected by the Appeal are those set out in paragraph 5.

2. DECISION:

(a) That in the said action the Plaintiff/appellant was not entitled to a decree for specific performance as no contract to purchase ever existed between the Plaintiff/Appellant and the Defendant/Respondent.

(b) That the Defendant/Respondent was entitled to possession and judgment on the counterclaim.

3. GROUNDS OF APPEAL:

The learned Trial Judge:

(a) Erred in law in holding that the relationship of vendor and purchaser could not arise between

the Defendant/Respondent and the Plaintiff/Appellant until the payment in full by the Plaintiff/Appellant of the agreed purchase price.

(b) Erred in law in holding that no contract to purchase ever existed between the Defendant/Respondent and the Plaintiff/Appellant in relation to the land, the subject matter of the lease dated the 8th October, 1973.

(c) Failed to give any or any sufficient consideration to the effect in law of the conduct of the Defendant/Respondent between the date of the receipt of the Plaintiff/Appellant's letter of the 29th June, 1977, and the date of the delivering of his Defence and particularly to his refusal any longer to abide by the stated purchase price.

(d) Erred in holding that the lease made between the Defendant/Respondent and the Plaintiff/Appellant notwithstanding the Plaintiff/Appellant's letter of the 29th June, 1977, continued in full force and effect until the 31st October, 1977, and the Defendant/Respondent was therefore entitled to possession and such further relief as he sought.

4. RELIEF SOUGHT:

That the decision of the 28th November, 1980, pronounced by the learned Trial Judge be set aside and that Judgment be entered for the Plaintiff/Appellant on both the claim and counterclaim with costs of the Court below and of this Appeal to be taxed.

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL:

Diaram Ramlakhan	66 First Avenue, Mt. Lambert
Samuel Ayoung Chee	68 First Avenue, Mt. Lambert

Dated this 10th day of December, 1980.

Wong & Sanguinette,
Solicitors for the Plaintiff/Appellant,
11 Queen's Park West,
Port-of-Spain

To: The Registrar of the Court of Appeal:

In the Court of Appeal

No.15
Notice of Appeal
10th December 1980

(continued)

And to: Mr. Noel James Chang,
35 Abercromby Street,
Port-of-Spain,
Solicitor for the Defendant/Respondent.

JUDGMENT DELIVERED BY
CLINTON BERNARD J.A.

In the Court of Appeal

No.16
Judgment delivered by Clinton Bernard J.A.
26th January 1983

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal
No. 127 of 1980

BETWEEN

DIARAM RAMLAKHAN - Appellant

AND

SAMUEL AYOUNG CHEE - Respondent

0000

Coram: Sir Isaac E. Hyatali C. J. - President
Cecil Kelsick J.A.
Clinton Bernard J.A.

January 26, 1983

E. Thorne Q.C. and Dr. Denbow with him - for the Appellant
Gaspard and Cottle - for the Respondent

J U D G M E N T

Delivered by Clinton Bernard J.A.

This appeal arises out of an action brought by Diaram Ramlakhan (the appellant) against Samuel Ayoung Chee (the respondent) for specific performance of an agreement contained in a Deed of Lease dated the 8th of October, 1973, and registered as No. 14159 of 1973 for the sale to him of a parcel of land at Mount Lambert with the appurtenances thereon by the respondent for the sum of $120,000 and in respect of which he was in occupation as a tenant of the latter for a term of four years commencing 1st November, 1973, at the yearly rent of $7,200 payable in advance by equal monthly instalments of $600.00 per month. The property in dispute is contiguous to a parcel with certain appurtenances thereon owned by the respondent.

The contract for the sale of the freehold reversion in the property, it was contended both before the learned judge and indeed before this court, arose by reason of an option of purchase which the appellant enjoyed under the lease and which he had duly and properly exercised but which the respondent refused to honour.

The learned trial judge in a written judgment dated 28th November, 1980, indicated that on the evidence he preferred and, as a result, accepted the version given by and on behalf of the appellant to that of the respondent. Nonetheless, he dismissed the appellant's claim and gave judgment for the respondent on his counterclaim. In doing so he held that by his failure to pay the agreed sum or alternatively to make a tender thereof during the currency of the lease, the appellant disentitled himself to the relief sought. And, holding further that the relationship of landlord and tenant remained in tact between the parties, he granted the respondent judgment on his counterclaim for, inter alia, possession, arrears of rent and mesne profits until delivery up of the demised premises.

Both parties were at all times in occupation of their respective holdings. However, it would seem from the respondent's pleadings that the appellant had at some time during the currency of the lease allegedly assigned the said lease to his wife. Nothing, however, turned on this either before the learned trial judge or, for that matter, before this court.

The grounds of appeal were as follows:-

"The learned Trial Judge:

(a) Erred in law in holding that the relationship of vendor and purchaser could not arise between the Respondent and the Appellant until the payment in full by the Appellant of the agreed purchase price.

(b) Erred in law in holding that no contract to purchase ever existed between the Respondent and the Appellant in relation to the land, the subject matter of the lease dated the 8th October, 1973.

(c) Failed to give any or any sufficient consideration to the effect in law of the conduct of the Respondent between the date of the receipt of the Appellant's letter of the 29th June, 1977. and the date of the delivering of his Defence and particularly to his refusal any longer to abide by the stated purchase price.

(d) Erred in holding that the lease made between the Respondent and the Appellant notwithstanding the Appellant's letter of the 29th June, 1977, continued in full

force and effect until the 31st October, 1977, and the Respondent was therefore entitled to possession and such further relief as he sought.

This appeal, I consider, turns upon the following questions:-

1. Did the lease contain an option clause in the form contented for by the appellant?

2. If it did, was the option duly exercised by him or on his behalf?

3. Assuming this was the case, what if any was the effect and/or consequences of the due and valid exercise of the option?

For the purposes of this judgment it will be sufficient, I think, so far as the evidence in the case before the trial judge went, to highlight certain areas of it. First of all it was proved that there was in fact this deed of lease between the Appellant and the Respondent dated, as alleged, under which the appellant held the land as "tenant" (which expression where the context so admitted included his executors, administrator and assigns) of the respondent for four years commencing from 1st November, 1973, with a right in the appellant to purchase the freehold reversion at any time before the expiration of that lease which would have been the 31st of October, 1977, (D.R.1). Next there was documentary evidence that by letter dated the 29th June, 1977, (D.R.2.) the appellant had sought through his solicitors, Messrs. Wong and Sanguinette, to exercise his option of purchase. This letter, it should be noted, was addressed to the respondent some four months before the expiration of the lease. Its contents, in my view, are of material importance.

It was as follows:-

"29th June, 1977.

Mr. Samuel Ayoung Chee,
68 First Avenue,
Mount Lambert,
SAN JUAN.

Dear Sir,

Re: No. 66 First Avenue Mount Lambert leased to Diaram Ramlakhan by lease dated the 8/10/73 registered as No. 14159 of 1973:

We are instructed by our client Diaram Ramlakhan the lessee in the above mentioned lease to notify you that he

is desirous of exercising the option to purchase the above numbered property contained in the said deed of lease for the sum therein stated.

Kindly note that our client is ready and willing to complete the said purchase and we should be glad if you will call at our office at any time to execute the deed of conveyance.

We may mention that after the expiration of the month of July, 1977, no further rents will be paid under the deed of lease.

Yours faithfully,

Wong & Sanguinette."

There was no dispute before the trial judge nor indeed in this court as to the veracity of the contents of D.R.1 or D.R.2, or as to the receipt by the respondent of D.R.2 itself. It is impossible to see how the receipt of D.R.2 could have been disputed in view of the visit which the respondent made to the appellant's solicitors subsequently. The fact of that visit was never disputed before the trial judge nor in this court although the contents of the conversation were indeed dispputed before the trial judge.

As regards the oral evidence, as I said earlier, the trial judge indicated quite categorically and indeed unequivocally in his judgment that he preferred the version given by and on behalf of the appellant to that of the respondent. The trial judge's approach in this regard was not challenged in this court by counsel for the respondent. It necessarily follows from his preferment of the version of the appellant that he accepted that the appellant through his solicitors had in fact indicated to the respondent four months in advance of the expiry date of the lease that in accordance with his entitlement he desired to and was accordingly both ready and willing to purchase the freehold reversion in the property and that for the purpose of giving effect to this the deed of sale was ready for execution. This, to my mind, must be implicit from the terms of the letter (D.R.2).

Next, it follows too that the trial judge had accepted that in response to this legitimate notice the respondent had in fact visited the office of the appellant's solicitors - Wong and Sanguinette - before the termination of the lease and again well in advance of its expiry date and had made it clear to Mr. Wong who was acting for the appellant at all material times that on no account was he any longer going through with the deal as the price agreed upon between them was no longer to his liking. It would be of interest to set out here what was the evidence of Mr. Wong in this regard. I quote it as recorded by the trial judge:-

" ... The defendant (respondent) came to see me a month or two after the letter was written. Mr. Ayoung Chee (respondent) told me that he could no longer sell the property at that price and that the price was too low as values of properties had risen. I told him that he had given an option to purchase at a specified price. He said in spite he could not sell for that sum. I suggested that he see his counsel ..."

Wong neither saw nor heard from the respondent after that day.

As I see it on the evidence before the trial judge and that which he preferred, the position must amount to this: The respondent had deliberately and unequivocally refused to execute the conveyance. And he had resiled from his obligations under the lease in this regard because he wanted more money! In effect as I see it, the respondent had repudiated the transaction for a reason neither covered nor contemplated by the lease.

In my opinion, having regard to the pleadings, the evidence and the approach of the trial judge on the facts, no difficulty arises with respect to arriving at an affirmative answer to the questions which I have posed at items (i) and (ii) of this judgment, Indeed, they have not been disputed in this court in the least by counsel for the respondent. In the result, the outcome of the matter, in my view, must depend upon the terms of the option clause, the proper interpretation which should be placed upon those terms, the evidence, and finally the application of the law to the facts of the case. It will be convenient, therefore, to turn first of all to the option which the appellant enjoyed under the lease and in respect of which he was not at the time of the letter of the 29th June, 1977, (D.E.2) in breach thereof. It was set out in Clause 4 thereof and was in these terms:-

"4 PROVIDED ALWAYS and it is hereby expressly agreed and declared as follows:-

(1) ... ...
(2) ... ...
(3) ... ...
(4) "At any time before the expiration of the term of FOUR (4) YEARS hereby created the Tenant shall be entitled to purchase the freehold property described in the SCHEDULE hereto subject to good title and free from encumbrances for the sum of ONE HUNDRED AND TWENTY THOUSAND DOLLARS ($120,000.00) and on condition that the said sum of ($120,000.00) shall be paid in full by the Tenant to the Landlord before the expiration of the term of FOUR (4) YEARS hereby created; and upon

> payment by the Tenant as aforesaid of the said purchase price as well as all arrears of rent hereunder (if any), the Landlord shall forthwith execute a Deed of Conveyance vesting the said freehold property in the Tenant in fee simple or as he shall direct."

It was the contention of counsel for the appellant that upon the exercise by the appellant of the option under Clause 4 a binding and irrevocable contract for the sale of the freehold reversion in the demised premises was thereby created between the parties. The respondent had repudiated the contract in clear and unambiguous terms and for a reason neither provided for nor contemplated by the lease. In all the circumstances, the appellant was entitled to seek, as he did, relief by way of specific performance. He cited in support of his argument the cases of Mountford v Scott, 1975 1 A.E.R. 198; Goldsborough Mort v Quinn, 1910 10 C.L.R. 674; Peter Turnbull v Mundus Trading 90 C.L.R. 235 and Bowen v Durham Holdings, 1973 131 C.L.R. 8.

On the other hand, it was the contention of counsel for the respondent that even though the appellant had validly exercised the option, still until the appellant had paid the purchase price of $120,000.00 or made a tender thereof, the relationship of vendor and purchaser did not arise between them. Since neither of the two events ever occurred, the appellant was not entitled to the equitable relief sought. The relationship of landlord and tenant remained in fact. He referred to textbook statements in Barnsley on Land Options and also relied principally upon the cases of Lord Ramelagh v Milton 1864 2 Drew and Sm 278; 66 E.R. 220; Brooks v Garrod 1857 2 De G - J 62; Hare v Nicholls, 1966 1 A.E.R. 295; Weston v Collins 1865 34 L.J. Ch. 353.

I am not attracted by the argument of counsel for the respondent. First of all, the terms of the option in the Lord Ramelagh, Brooks Weston and Hare Cases were different in terms from those in Clause 4. In the first three cases the payment of the purchase money before the expiry date of the notice of the exercise of the option was a condition precedent to the validity of the notice itself. In the Hare Case both the notice and payment had to be given and made respectively by express dates. Time in each of these cases was therefore, made the essence of the contract. I do not construe Clause 4 in the same light as the clauses in the cases aforesaid. Here no dates were specified and, moreover, payment of the purchase money at the time of the notice was not a condition precedent to the validity of the exercise of the latter. I do not in all the circumstances find these cases cited by counsel for the respondent of assistance as to the proper construction to be given to Clause 4 which incidentally, in my opinion, is in quite broader and more flexible terms.

I view Clause 4 in this way: It did not create a contract between the parties. Although it formed part of the lease it was collateral too but independent of the lease itself. The option gave the appellant a choice in action or equitable interest in the freehold reversion of the demised premises with the right to have the said freehold reversion conveyed to him at a later stage if he so wished. This right to the freehold reversion would immediately vest in the appellant upon the exercise by him of his option provided that he exercised it at any time before the expiry date of the lease itself - that is to say - by October the 31st of 1977, at least. However, it was also a condition precedent to the appellant's right to the conveyance of the freehold reversion in the demised premises that he would pay to the respondent the sum of $120,000.00 therefor as agreed between the parties at some time before the expiry of the lease though not necessarily at the same time when the appellant exercised his option of purchase.

It seems to me as well that the parties were in addition seeking by Clause 4 to set up the machinery whereby the change from the status of "landlord and tenant" to that of "vendor and purchaser" could be effectively achieved as envisaged between the parties which, if it did, would cause the appellant's liability for the payment of rent thereafter to cease as well. In this connection Clause 4 also ought to regulate the machinery whereby this object could be achieved in an orderly and business-like way. In my opinion, the proper and more reasonable construction to be put upon clause 4 is that the parties intended that, given the proper exercise of the option, the execution of the conveyance of the freehold reversion and the payment of the purchase money would take place more or less at or about the same time. In this connection, it seems to me that the use of the expression "forthwith" in the clause is not without some significance. Were it otherwise intended, it seems to me that the respondent then would still have been entitled to the rents even though payment to him of the agreed purchase price had been made long in advance of the expiry date of the lease and the respondent had not executed the conveyance or taken steps so to do until an unreasonably long period thereafter. In my view, upon a proper construction of clause 4 this could not have been the intention of the parties at all. Having said this, I would mention that in this jurisdiction a well-known practice has developed over the years and one which is well-known to practitioners alike whereby in all conveyances of the sort contemplated by Clause 4 payment of the purchase price is made or effected at the time of the execution of the conveyance itself and not before. It is in this context that to my mind the letter of the 29th June, 1977, (D.R.2) and the evidence of Wong are material.

An option in a lease to purchase the freehold reversion

gives to the optionee an equitable interest therein - See Wright v Dean 1948 2 All E.R. 415; Re Button's Lease, Inman and Another v Button 1963 3 All E.R. 708. An assignee of the lease may, in certain circumstances, be entitled to the benefit of the option and almost certainly so where in the lease the expression "tenant" or "lessee" is defined to include his "assigns" - Re Button's Lease (supra).

A similar view as to the effect of a grant of an option in general was expressed by Brightman J. in Mountford v Scott 1974 1 A.E.R. 248 where at Page 255 - Letter A - C he had this to say:-

> "an option creates an equitable interest in the land over which it is exercisable. This was so stated by Jessel MR in London and South Western Railway Co. v Gomm /1882 20 Ch. 562/. The point in that case was whether an option exercisable over land was subject to the rule as to remoteness Jessel MR said: 'The right to call for a conveyance of the land is an equitable interest or equitable estate. In the ordinary case of a contract for purchase there is no doubt about this, and an option for repurchase is not different in its nature. A person exercising the option has to do two things; he has to give notice of his intention to purchase, and to pay the purchase-money; but as far as the man who is liable to convey is concerned, his estate or interest is taken away from him without his consent, and the right to take it away being vested in another, the covenant giving the option must give that other an interest in the land.' The proposition that an option to purchase land creates an equitable interest in the land was treated as settled law by Plowman J. in Re Button's Lease, Inman v Button. Such equitable interest is the inevitable consequence of the existence of the option." /See also Hill & Redman - Landlord and Tenant - 16th Edition - para 82 - Pages 154 - 157/.

On the strength of these authorities it seems to me that clearly under the terms of the lease the appellant had an equitable interest in the freehold reversion in the demised premises. However, I do not seek to rest the matter on this aspect nor indeed to belabour the point unduly. I have called attention to it for the prime purpose of illustrating the implications of the lease as I see it and, if I am right, of demonstrating the inability of the respondent as a result, to do any act during the currency of the lease - all things being equal - that was

prejudicial to the appellant's interest in the freehold reversion without the latter having some corresponding legal redress. Otherwise, the grant to him of the option under the lease would have been valueless. That this could not be the true position is illustrated by the dictum of Plowman J. in Re Button's Lease (supra) who after reviewing the earlier authorities stated at p. 713 F to G:

> "So that to my mind it is well settled that whether or not an option to purchase land is a contract or a conditional contract, nevertheless it does create in favour of the person to whom it is given a choice in action or equitable interest in the land and, as such, a piece of property."

In my opinion, having regard to the terms of clause 4, the letter of the 29th June, 1977, (D.R.2) and the evidence for the appell nt which the trial judge believed and accepted, the appellant having accepted the respondent's offer while the option was current, a binding and irrevocable contract for the sale to the appellant of the respondent's interest in the freehold reversion, to with the fee simple, was created between the parties. In my judgment, the relationship of vendor and purchaser arose between them at that stage - See in this connection Hill & Redman - op. cit - Paras 83 and 85 - Pages 157 - 159; Halsbury's Laws of England - 4th Edition Vol. 27 - Paras 110 and 112 - Pages 89 - 90. The fact that the appellant neither made payment nor a tender thereof at that time was immaterial because at that stage he was by the terms of clause 4 under no compunction so to do in order to create the particular relationship. What was necessary to create the relationship was the due and proper exercise by the appellant of the notice of option. As I see it if despite the exercise of the option the appellant took no effective steps later during the currency of the lease to acquire the freehold reversion tbe option would have lapsed.

As I said earlier, Clause 4 in my view, contemplated the possibility of the payment of the purchase money either at the time of the exercise of the option or at some time subsequent thereto. That being so, then it follows that the non-payment of the purchase money at the time of the exercise of the option would not have affected the relationship that had been created by the exercise of it. It cannot, in my view, be contended that if a condition is not precedent to the validity of the exercise of an option failure to honour that condition at the time of its exercise could, even remotely, affect the validity of the option itself or the relationship that may have been created by the due and proper exercise of it.

Further, I am unable to appreciate how counsel for the respondent could rely successfully upon the appellant's failure to pay the purchase money in any event during the currency of the lease or even to make a tender thereof (about which latter point I shall come later) as a ground for his contention against the relief sought when the non-fulfilment of the condition was due entirely to the respondent's own fault.

I am of the opionon that the clear and unequivocal refusal by the respondent to honour his side of the bargain unless he was paid more was effective, in the circumstances to deprive the appellant unjustifiably of his entitlement to the freehold reversion in the premises at the stipulated price as agreed and that his resilement therefrom amounted to a repudiation by him of the contract. In this connection it seems to me that from the evidence of the respondent's conduct as found by the trial judge it would have been futile for the appellant's solicitor - Wong - to attempt thereafter to have any further dealings with the respondent in the matter. The respondent was not prepared to budge! The solicitor did what to my mind was the logical thing in the circumstances. He caused his client to issue a writ promptly to invoke the jurisdiction of the court for the equitable remedy of specific performance of the contract in the light of the respondent's behaviour. As Lord Mansfield said in Jones v Barkley 99 English Reports 434 at Page 440:

> "Take it on the reason of the thing. The party must show he was ready, but if the other party stops him on the ground of an intention not to perform his part, it is not necessary for the first to go further and do a nugatory act."

On the evidence there was no breach of any of the covenants in the lease by the appellant. And, in my opinion, on the evidence he did not only accept the offer given to him under the option clause but thereafter he manifested by his conduct his desire to bring the matter to a successful conclusion.

In Mills v Haywood (1877) 6 Ch. D 196 the facts were as follows:-

> "M. became tenant to A of leasehold property for ten years from December, 1861, 'M. to have the option at any time during the said term to purchase the premises for £3500, and upon payment thereof to A. the said term of ten years and the said rent shall thereupon cease and M. shall thereupon be entitled to an assignment.' M. entered into possession and afterwards A. made a mortgage to G. In

July, 1867, M. gave written notice to A. and to G. that he elected to purchase. A draft assignment was prepared, which could not be settled, since neither A. nor G. would assent to the purchase-money being paid to the other of them. A correspondence took place, which ended in March, 1868. G. having given notice to M. to pay his rent to him, M. made to him various irregular payments, for most of which receipts were given expressing them to be on account of rent, and this went on after the end of the term of ten years. In November, 1872, A. became bankrupt. On the 1st May, 1873, the solicitor of A.'s trustee in bankruptcy called on M., and stated that the trustee was going to sell and wished to give him the refusal. M. desired time to consider, and did not say that he had already agreed to purchase. On the next day his solicitor discussed the matter with the trustee's solicitor, but did not set up any claim as having purchased. On the 13th of May, however he wrote to the trustee's solicitor insisting on M.'s right under the agreement of 1861 and the notice of July, 1867, and the trustee disputing this right, M. filed a bill for specific performance:-

Held (affirming the decision of Hall, V.C.), that the option in the agreement of 1861 and the notice of July, 1867, made a binding contract, although the purchase-money was not paid within the term: Held (reversing the decision of Hall, V.C.), that M.'s right to specific performance was lost by the delay from March, 1868, to May, 1873, which was not excused by his having been in possession; for that possession, in order to have that effect, must be a possession under the contract, and such that the vendor must know, or be taken to know, that the purchaser claims to be in possession under the contract; and in this case the Plaintiff did not, from March, 1868, to May, 1873, claim possession under the contract, nor did it appear that the vendors recognised him, or were bound to recognise him, as claiming possession under it."

Cotton L.J. who delivered the judgment of the court had this to say at p. 200 - 201 ibid:-

"The first question raised by the Appellant is that there never was any binding contract for sale to the Plaintiff. The facts on which this question depends are as follows:-

(His Lordship stated the nature of Austin's interest, the agreement of the 23rd of December, 1861, and the Plaintiff's possession under it, and the letters of July, 1867, to Gibbon and Austin).

In the opinion of the Court this made a binding contract between the Plaintiff of the one part, and Austin and Gibbon of the other part, for the sale to the Plaintiff of the leasehold interest in the Rednor, to which at the date of the contract of the 23rd of December, 1861, Austin was entitled. It was, indeed, contended by the Appellant, that until payment of the purchase-money there was no contract. But the 4th clause of the agreement of December, 1861, does not, in our opinion, make payment of the purchase-money a condition precedent to the existence of a contract. It is an offer of the property to the Plaintiff with liberty to him to accept it at any time during his term. When he sent the letters of July, 1867, already referred to, the acceptance therein obtained made the offer in the 4th clause of the agreement a complete contract, and what we have to decide is whether the Plaintiff can now claim the benefit of that contract ..."

The principle enunciated in Mills v Haywood (supra) as to the effect of the due and proper exercise of an option to purchase the freehold reversion contained in a lease was endorsed and followed in the later case of Cockwell v Ramford Sanitary Steam Laundry Ltd. 1939 4 A.E.R. 370 where in construing a like clause in a written lease between the parties Luxmore L.J. delivering the judgment of the Court had this to say at p. 375 - Letters C - F.

"In our judgment, the words of cl. 5 of the lease in the present case are, for all practical purposes, indistinguishable from those considered in Mills v Haywood /1877 6 Ch. Division 196/. In that case, a lease granted to the plaintiff Mills contained a clause in the following terms at p. 197:

'Mr. Mills to have the option at any time during the said term to

> purchase the above premises for £3,500 and such an amount as Mr. Austin shall pay for law and other expenses attendant upon the purchase and re-sale thereof; and upon payment thereof and of the other sums due under this agreement as hereinafter mentioned to Mr. Austin the said term of 10 years and the said rent of £1,000 per annum shall thereupon be entitled to an assignment of the leases.'

It was held by the Court of Appeal, affirming the decision of Hall, V.C., on this point, that the giving of a notice under the option constituted a binding contract between Mills and the assignee of the reversion, and that the payment of the purchase price was not a condition precedent to the coming into existence of such a contract. We have no hesitation in holding that, on the true construction of cl. 5 of the lease, a binding contract to purchase came into existence when the notice exercising it was given to the plaintiffs."

/See also Goldsborough Mort v Quinn 1910 10 Commonwealth Law Reports p. 674/.

A party in cases of the kind cannot, it would seem, seek to invoke the equitable remedy of specific performance albeit that he has duly exercised the option unless it can be demonstrated that he has abided or at least sought to abide by the spirit of the option clause itself. That this is so seems to be illustrated by the same case of Mills v Haywood (supra) where it was also held that the respondent's /Mills'/ tardiness was fatal to any relief. In this connection, Cotton L.J. again had this to say at p. 202 ibid:-

> "It is a well-established principle, as laid down by Lord Alvenley in Milward v Earl Thenet 5 Ves 720 n, that a party cannot call upon a Court of Equity for a specific performance unless he has shown himself ready, desirous, prompt, and eager.
> This rule is specially applicable where the subject-matter of the contract is of a somewhat speculative and fluctuating value, as the tavern, the subject of the present suit, must necessarily be; and the delay which has occurred in the present case

from March, 1868, till May, 1873, unless satisfactorily explained, must be fatal to the Plaintiff's title to a decree for specific performance. It was contended that the delay was solely attributable to the disputes between Gibbon and Austin; but even if this were so, it was the duty of the Plaintiff, if he desired to obtain specific performance, to insist upon, and if necessary file a bill to enforce, specific performance of his contract."

A like approach to the matter was invoked by Wynn-Parry J. in Wright v Dean 1948 2 A.E.R. 415 where at Page 417 he had this to say ibid at Letter D:-

"The option confers a right to call for a conveyance of the freehold and therefore it creates an interest in the land. As appears clearly from London and South Western Railway Co. v Gomm (1882 20 Ch.562 and also the Judgment of Warrington J. in Worthing Corporation v Heather (1906 2 Ch. 532) as the contract creates an interest in land, equity, if properly invoked will intervene to decree specific performance of the contract."

On the evidence in this case not only did the appellant properly exercise his option but, in my judgment, it is also clear from all the surrounding circumstances that he had demonstrated at all material times his readiness and eagerness to perfect the bargain to the extent that following upon the Respondent's clear and unequivocal resilement he took the necessary steps to cause the respondent to comply with his side of the bargain. He did so by resort to the only legitimate process available to him in the circumstances. To this end he promptly filed and issued his writ on the 29th September, 1977, which, incidentally, was before the expiry date of the lease for the equitable relief of specific performance.

In the event, I would allow the appeal, grant the relief of specific performance of the agreement referred to in the statement of claim and dismiss the counterclaim. I would also order that the respondent execute the conveyance of the premises described in the Schedule to the deed of lease dated 8th October, 1973, and registered as No. 14159 of 1973 comprising 5610 superficial feet within 28 days and that in default the Registrar should do so. I will also order the respondent to pay costs on the claim and counterclaim both here and below.

Clinton Bernard,
JUSTICE OF APPEAL.

JUDGMENT DELIVERED BY
MR KELSICK J.A.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Civil Appeal
No. 127 of 1980

BETWEEN

DIARAM RAMLAKHAN — Appellant

AND

SAMUEL AYOUNG CHEE — Respondent

****

Coram: Sir Isaac Hyatali, C.J.
C. A. Kelsick, J.A.
C.Bernard, J.A.

January 26, 1983.

Ewart Thorne, S.C. and Dr. C. Benbow - for the Appellant
W. Gaspard and Miss A. MacKenzie - for the Respondent

J U D G M E N T

Delivered by Kelsick J.A.:

By a deed dated October 8, 1973, the respondent leased to the appellant the freehold property ("the property") situate at St. Ann's described in the Schedule thereto, for a period of 4 years commencing November 1, 1973, at an annual rental of $7,200.00 payable in monthly instalments of $600.00 in advance.

An option to purchase the reversion was granted to the appellant in clause 4(4) of the lease, which was prepared by the respondent's solicitor, the text of which is:-

> "At any time before the expiration of the term of FOUR (4) YEARS hereby the Tenant shall be entitled to purchase the freehold property described in the SCHEDULE hereto subject to good title and free from encumbrances for the sum of ONE HUNDRED AND TWENTY THOUSAND DOLLARS ($120,000.00) and on

condition that the said sum of ($120,000.00) shall be paid in full by the Tenant to the Landlord before the expiration of the term of FOUR (4) YEARS hereby created; and upon payment by the Tenant as aforesaid of the said purchase price as well as all arrears of rent hereunder (if any), the Landlord shall forthwith execute a Deed of Conveyance vesting the said freehold property in the Tenant in fee simple or as he shall direct."

The material facts as found by the trial judge are now recounted.

Messrs. Wong and Sanguinette, the solicitors for the appellant, addressed to the respondent a letter dated June 29, 1977, notifying him that the appellant was desirous of exercising the said option for the sum therein stated, and was ready and willing to complete the purchase of the property; inviting the respondent to call at the solicitors' office at any time to execute the deed of conveyance, and stating that after the expiration of the month of July 1977 no further rents would be paid under the lease.

In July or August 1977 the respondent visited Mr. Wong and informed him that he the respondent could no longer sell the property at the agreed price and that the price was too low as values of property had risen. Wong reminded him that he had given an option to purchase at a specified price and suggested that the respondent consult his counsel who had prepared the deed of lease.

The writ of summons was issued on October 10, 1977. The Statement of Claim, after stating in gist the above facts, (which were admitted by the respondent in his statement of defence) went on to assert: (a) that the appellant has at all material times and is now ready and willing to fulfil his obligations under the option, and (b) that notwithstanding the request contained in the letter of June 29, the respondent has neglected and/or refused to complete the said purchase. The remedies sought were specific performance of the agreement and damages.

In his defence and counterclaim the respondent pleaded (i) that he was, and is, willing to convey 5,800 s.f. as shown on an alleged plan, but the appellant insisted on having conveyed to him an additional strip of land (measuring 190 s.f.) on the western boundary of the property; (ii) that in October 1977 the appellant, in breach of the lease, parted with possession of the property to Samdaye Ramlakhan without the consent in writing of the respondent. On the basis of those occurrences the respondent sought a declaration that he was entitled to rescind the option. He also claimed arrears of rent from August to October 1977, possession of the property, the lease having expired by effluxion of time, and mesne profits from November 1, 1977, at the rate of $600.00 per month.

The trial judge dismissed the claim and ordered the appellant to deliver up to the respondent possession of the property and to pay to the respondent $1,340.00 arrears of rent and mesne profits from October 8, 1977, at the rate of $600.00 per month until delivery of possession of the property.

The excess 190 s.f. comprises a wall extending along the full length of the western boundary. It is agreed that any order for specific performance should exclude the 190 s.f. Samdaye, who is the wife of the appellant, conducted on the property a spirit retailer's business in her name and the legality of her occupancy is not in contention.

The resolution of this appeal turns on the true and correct interpretation of clause 4(4) of the lease. There is agreement as to the principles applicable.

In Hill and Redman's Law of Landlord and Tenant (16th ed.) it is written in para. 83 at p. 157:

> "Conditions precedent to exercise of option - Any matters which by the terms of the option are made conditions precedent to its exercise must be strictly observed. Thus, the notice must be given within the specified period, and if payment of the purchase-money at the expiration of the notice is made a condition precedent, the payment must be duly made. But it is not essential that the lessee shall have performed all the stipulations of the lease, unless such performance is made a condition precedent. Moreover, strict compliance with the terms of the option may be waived. Provided that at the time when the option is exercised the lease is still current - that is, it has not been already determined for breach of covenant - the exercise of the option creates the relation of vendor and purchaser. Whether it will also operate to determine the tenancy will depend upon the intention of the parties to be collected from the agreement. In particular an intention that the rights and liabilities incident to the relation of landlord and tenant shall cease from the exercise of the option will be inferred where provision is made, as it usually is, for payment of interest on the purchase money from that date."

An option in a lease to purchase the reversion is an irrevocable offer which, on acceptance, creates the relationship of vendor and purchaser between the landlord and tenant, and vests in the tenant an equitable interest in the property.

The decision in Goldsbrough, Mort & Co. Ltd. v. Quinn (1909-10) C.L.R. 674, so far as relevant to this case, sufficiently appears from the headnote:

> "The defendant, for valuable consideration, gave the plaintiffs an option for a week to purchase the defendant's conditionally purchased and conditionally leased lands at a price of 30s per acre, 'calculated on a freehold basis.' Before acceptance the defendant repudiated the offer. The plaintiffs, notwithstanding the alleged repudiation, accepted the offer within the week, and brought a suit for specific performance of the agreement for sale at a price of 30s per acre, after deducting the payments due to the Crown to make the land freehold, which was a fair price for the land. ....
>
> Held, that the option having been given for value was not revocable, and that the acceptance of the offer by the plaintiffs constituted a binding contract, which was enforceable by specific performance."

The option was contained in a document signed by the defendant and dated February 8, 1909.

Turning to the rationes decidendi, O'Connor J. at p. 685-6 based his decision on two alternative grounds. He concurred in the opinion of Farwell J. in Bruner v. Moore /1904/ 1 Ch. 305, 309, that it was settled law that an option for value is not revocable during the period for which it is given. The other ground was that there had been an agreement to sell on a condition subsequent, the condition being the acceptance of the other party within the time named, which the plaintiffs had performed.

Isaacs J. at pp. 690-2 considered that a contract known as an option had been concluded on February 8. This consists of a promise founded on valuable consideration to sell land on stated terms within a given time. In other words it is the sale of the right of electing whether to purchase or not. The offer in law was not withdrawn and, when linked with the acceptance, the necessary mutual contractual obligation to sell and purchase on the stipulated terms was created. Obiter he expressed the view that the option gives the optionee an interest in the land, (as appears by London and South Western Railway Co. v. Gomm (1881) 20 Ch. D. 562) which is not the same as that of a purchaser, but is something real and substantial and beyond the power of the grantor of the option to withdraw.

Griffith C.J. at p. 678 said:

"I think that the true principle is that in

"such a case the real transaction is not an offer accompanied by a promise, but a contract for valuable consideration, viz., to sell the property . . . upon condition that the other party shall within the stipulated time bind himself to perform the terms of the offer embodied in the contract. I think that such a contract is not in principle distinguishable from a stipulation in a lease that the lessee shall have an option of purchase, which is in substance a contract to sell upon condition."

For the respondent it is contended that it was a condition precedent for the exercise of the option by the appellant that the purchase money should be paid or tendered and, as this was not done, the relationship of vendor and purchaser between the parties did not arise and no contract was concluded for the sale of the property.

It is convenient here to refer to the following cases which were cited in relation to the question whether the payment of the purchase money was in the circumstances of this case a condition precedent to the conclusion of the contract of sale by the exercise of the option or merely to the completion of the contract.

Dawson v. Dawson (1831) E.R. 137. Here the court in interpreting the phrase "but should my said son not complete such purchase", stated the obvious that the completion consisted of the payment of the purchase money followed by the conveyance; and that the former must precede the latter.

Ranelagh v. Melton (1864) 62 E.R. 627. The lessees, who were granted an option to purchase the fee simple, were required to pay the purchase money at the expiration of three months from the date of giving notice of their desire to purchase the fee simple; upon which the lessor was to convey the same to them. The court decided that, on failure of the lessees to pay at the fixed time, they lost their right to purchase, and specific performance of the contract was refused. Time was considered to be of the essence of the contract, payment on time being a precondition to the coming into being of the contractual relationship.

Weston v. Collins (1865) 12 L.T. 4. In a lease for 21 years the lessor, C., covenanted that if the lessees should be desirous at the expiration of the term of purchasing the reversion, and shall give 6 calendar months notice in writing of their desire to the lessor, and shall pay to him the sum of £2,000.00 as and for the purchase thereof . . . the lessor will assing the same to the lessees. The lessees assigned the lease to W. who served the lessor with notice of her intention to purchase.

The solicitors for the lessor gave notice to W. and his solicitor that C. would attend at the offices of C.'s solicitor

on September 29, 1963, which was the day that the term expired, to execute the deed of conveyance; and that, if the purchase money and rent then due were not paid on or before that date, C. would refuse to permit W. to become the purchaser of the property. W. attended to receive the £2,000.00 but C. did not pay it, giving as his execuse W.'s delay in delivering a proper abstract and in answering requisitions. The trial judge decreed specific performance on W.'s payment of £2,000.00 and interest.

On appeal it was held by the Lord Chancellor that the contract was so worded as to impose an obligation on the lessee to pay the money as a precedent condition to any obligation arising on the part of the lessor, that it was in fact a conditional offer by the lessor, and that the condition must be observed before the offer becomes binding. The result was that W. had to take the risk of paying the whole purchase money before he could ascertain whether C. could make a full conveyance of the fee simple; but if this could not be done, the money was recoverable.

The appellate judge, allowing the appeal, held that in consequence of the non-payment of the purchase money on September 29, 1963, there was no contract binding on C.

None of these cases are applicable to the instant appeal - which hinges on the particular wording of the covenant.

More apposite is the case of Mills v. Hayward (1877) 6 Ch. D. 196 where under a lease Mills, who became tenant to Austin for ten years from December 1861, was to have an option at any time during the said term to purchase the premises for £3,500.00, and upon payment thereof the said term and the said rent charged thereupon were to cease and Mills was thereupon to be entitled to an assignment. Gibbon was a mortgagee by assignment from Austin under a deed of January 23, 1867.

A letter dated July 26, 1867, to Austin and Gibbon from the solicitors for Mills stated that:

> "Mr. Mills is desirous of exercising his right to purchase the lease of the Radnor and has instructed us to call upon you to complete the sale, which he is ready and willing to do."

The effect of the above transaction is set out in the judgment of the Court of Appeal per Cotton L.J. at p. 200-1:

> "In the opinion of the Court this made a binding contract between the Plaintiff of the one part, and Austin and Gibbon of the other part, for the sale to the Plaintiff of the leasehold interest in the Radnor, to which at the date of the contract of the 23rd of December, 1861, Austin was entitled. It was, indeed, contended by the

"Appellant, that until payment of the purchase-money there was no contract. But the 4th clause of the agreement of December, 1861, does not, in our opinion, make payment of the purchase-money a condition precedent to the exercise of a con-contract. It is an offer of the property to the Plaintiff with liberty to him to accept it at any time during his term. When he sent the letters of July, 1867, already referred to, the accept-
10 ance therein contained made with the offer in the 4th clause of the agreement a complete contract, and what we have to decide is whether the Plaintiff can now claim the benefit of that contract."

The result in law of the respondents in the present case declared intention not to convey the property on the rights and duties of the parties was adverted to in: Peter Turnbull & Co. Pty. Ltd. v. Mundus Trading Co. (Australia) Pty. Ltd. 90 C.L.R. 235 per Dixon C.J. at pp. 245-7, in which he cites
20 the dictum of Lord Mansfield in Jones v. Barkley (1781) 99 E.R. 439, 440:

"Take it on the reason of the thing. The party must show he was ready; but if the other stops him on the ground of an intention not to perform his part, it is not necessary for the first to go further, and do a nugatory act."

The two alternative courses open to the promisee are summarised in Chitty on Contracts (General Principles) (24th ed.) at para. 1482:

30 "Renunciation before performance. If, before the time arrives at which a party is bound to perform a contract, he expresses an intention to break it, or acts in such a way as to lead a reasonable person to the conclusion that he does not intend to fulfil his part, this of itself entitles the other party to take one or two courses. He may treat the renunciation as discharging him from further performance and sue for damages forthwith, or he may wait till the time for performance arrives and then sue."

40 The second course, which was followed in the instant case, was elaborated upon in the leading case of Johnson v. Milling (1886) 16 Q.B.D. 460 by Cotton L. J. at p. 476:

"The promisee, if he pleases, may treat the notice of intention as inoperative, and await the time when the contract is to be executed, and then hold the other party responsible for all the consequences of non-

"performance; but in that case he keeps the contract alive as his own; he remains subject to all the obligations and liabilities under it, and enables the other party not only to complete the contract, if so advised, notwithstanding his previous repudiation of it, but also to take advantage of any supervening circumstances which would justify him in declining to complete it...."

That passage was cited with approval in my judgment in Tiffany Glass Limited v. F. Plan Limited Civ. App. No. 85 of 1978 dated June 21, 1979.

The case for the appellant is (i) that the letter of June 29, was an acceptance of the irrevocable offer to sell the property contained in the option; in consequence of which the appellant had an equitable interest in the property with the right to the purchase by, and conveyance to, him of the legal estate; (ii) that the payment of the purchase money (and of arrears of rent if any) was a condition precedent to the completion of the contract by way of conveyance of the land, and not to the prior valid exercise of the option; (iii) that there was an anticipatory breach of the contract for sale by the respondent and a repudiation of his obligations under clause 4(4) when he declared to Wong that he had no intention of conveying the property to the appellant at the agreed price; and (iv) that consequently the appellant was under no duty thereafter to perform the futile act of tendering the purchase money before suing for specific performance.

The trial judge held that, since the purchase money had not been tendered before October 31, 1977, there was no contract for the sale of the property which could be specifically enforced. In so deciding, he failed to observe the difference between the conclusion of the contract for sale on June 29, by the appellant's acceptance in his letter of that date and the subsequent completion of the contract to be effected by payment of the purchase money and execution of the deed of conveyance. He also did not address his mind to the contract of the respondent in renouncing his obligation under the concluded contract of sale, whereby the respondent released the appellant from compliance with the stipulation to pay, or to offer to pay, the purchase price before instituting the action.

It is not necessary to decide whether the exercise of the option put an end to the lease and therefore to the entitlement of the respondent to rent thereafter.

I am in agreement with the arguments submitted for the appellant. On a proper analysis of clause 4(4) the stages contemplated are (i) the giving of a notice by the appellant to the respondent at any time after November 1, 1973, and before October 31, 1977, of his intention or decision to exercise the option; (ii) whereupon the relationship of vendor and purchaser comes into

being, thereby vesting an equitable interest in the property in the appellant and entitling him (iii) to a conveyance of the property on payment of the purchase price on or before October 31, 1977.

It is obvious that the payment of the purchase money is not required to precede, or to coincide with, the exercise of the option, which could be made as early as November 2, 1973; since the purchase money need not be paid till October 31, 1977, and as the clause provides that it is on payment of that sum that the lessor is mandated to execute the deed of conveyance.

In my judgment there is no ambiguity in clause 4(4). If it were capable of both meanings ascribed to it by the respondent and the appellant respectively, then the latter would be adopted in accordance with the contra profarentem rule.

In summary my conclusions are:-

(1) that on a true construction of clause 4(4) of the deed of lease it was not a condition precedent to the valid exercise of the option that the purchase money should be paid or tendered;

(2) that clause 4(4) conferred on the appellant an irrevocable offer to purchase the property;

(3) that clause 4(4) constitutes an agreement binding on the respondent whereby the appellant bought the right to purchase the property at any time during the continuance of the lease, subject to the performance by the appellant of the conditions subsequent - that is, giving notice of his intention to purchase at any time during the continuance of the lease and paying the purchase money on or before the last day of the lease;

(4) that by the letter of June 29, 1973, the appellant effectively exercised his option under that clause, whereupon he was entitled to a conveyance of the property;

(5) that the refusal of the respondent to complete the contract for sale was an anticipatory breach of the agreement, which excused the appellant from further performance by way of tendering the purchase money;

(6) that the appellant was then entitled either to accept the repudiation, whereupon the

agreement provided in the lease came at an end, and to sue for damages for breach of contract; or alternatively, as he did, not to accept the repudiation, and to regard the contract as continuing and to sue for specific performance of the same.

I would allow this appeal, decree specific performance of the agreement and order the respondent to convey to the appellant the premises described in the Schedule to the deed of lease dated October 8, 1963, and registered as No. 14159 of 1973, comprising 5,610 superficial feet (thereby excluding the portion on the western boundary comprising 190 s.f.); and dismiss the counter-claim.

In default of the respondent executing the said conveyance within 28 days I would order the Registrar to execute the same.

I would also order the respondent to pay to the appellant his taxed costs of the claim and counterclaim here and in the court below.

There shall be liberty to apply.

C. A. Kelsick,
Justice of Appeal.

No.18

ORDER

TRINIDAD AND TOBAGO

In the Court of Appeal

No.18
Order
26th January 1983

IN THE COURT OF APPEAL

Civil Appeal No. 127 of 1980

High Court Action No. 2596 of 1977

Between

DIARAM RAMLAKHAN — Plaintiff/Appellant

And

SAMUEL AYOUNG CHEE — Defendant/Respondent

DATED the 26th day of January, 1983

ENTERED the 26th day of January, 1983

BEFORE the Honourable the Chief Justice

Mr. Justice C. Kelsick J.A.,
Mr. Justice C. Bernard J.A.,

UPON READING the Notice of Appeal filed on behalf of the above named Plaintiff/Appellant, and dated the 10th day of December, 1980, and the Judgment hereinafter mentioned.

UPON READING the Record filed herein.

UPON HEARING Counsel for the Plaintiff/Appellant, and Counsel for the Defendant/Respondent.

AND UPON Mature deliberation thereupon had;

IT IS ORDERED

(i) that this Appeal be and the same is hereby allowed;

(ii) that the Order of the Honourable Mr. Justice John Brathwaite dated the 28th day of November, 1980 be set aside and Judgment entered in favour of the Plaintiff/Appellant;

(iii) that the relief of specific performance of the agreement referred to in the statement of claim be and the same is hereby granted to the Plaintiff/Appellant;

(iv) that the counter-claim be and the same is hereby dismissed.

In the Court of Appeal

No.18
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26th January
1983

(v) that the Defendant/Respondent execute the conveyance within twenty-eight (28) days, in default of so doing, the Registrar to execute the said conveyance.

AND IT IS FURTHER ORDERED

(Contd) That the Defendant/Respondent do pay to the Plaintiff/Appellant costs on the claim and counter-claim, both here and in the Court below.

Liberty to apply.

Registrar.

No.19

LETTER FROM CLERK OF APPEALS

In the Court of Appeal

No.19
Letter from Clerk of Appeals
13th January 1984

REGISTRY
COURT OF APPEAL
TRINIDAD HOUSE
PORT OF SPAIN
TRINIDAD
TRINIDAD AND TOBAGO

13th January 1984.

Messrs. Montano & Co.
20 Abercromby Street
Port of Spain.

Sir,

Re: CA - 127/80 Diaram Ramlakhan -vs- Samuel Ayoung Chee

On the 26th January, 1983 the Court of Appeal comprising the Chief Justice, Isaac Hyatali, Clinton Bernard J.A. and Cecil Kelsick, J.A. delivered Judgment and allowed the above described Appeal. Written Judgments were issued by Justice Bernard and Justice Kelsick with which the Chief Justice concurred.

S. Nurse

for Clerk of Appeals

No.20

ORDER GRANTING FINAL LEAVE TO APPEAL TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 127 of 1983

BETWEEN

DIARAM RAMLAKHAN — Appellant/Plaintiff

AND

SAMUEL AYOUNG-CHEE — Respondent/Defendant

****

DATED the 6th day of June 1983

ENTERED the 24th day of June 1983

BEFORE the Honourables Cecil Kelsick, C.J.,
John Brathwaite, J.A.,
Clinton Bernard, J.A.

On the return of the Motion issued on the 6th day of May, 1983 on behalf of the above named Defendant/Respondent, upon reading the said Notice of Motion, the affidavit of Samuel Ayoung Chee sworn to on the 6th day of May, 1983 and the exhibits annexed thereto and marked "S.A.Y.C.1" and "S.A.Y.C.2" all filed herein

UPON HEARING Counsel for the Defendant/Respondent and Counsel for the Plaintiff/Appellant

IT IS ORDERED, BY CONSENT

(i) that final leave be and the same is hereby granted to the Defendant/Respondent to appeal to the Judicial Committee of the Privy Council against the Judgment of the Court of Appeal herein delivered on the 26th day of January, 1983, and

(ii) that the costs of this application be costs in the cause.

B.F. Paray
Assistant Registrar

TRINIDAD AND TOBAGO

Reg. No. 14159 of 1973

This Deed was prepared by me,
Frank Allum Poon
Barrister-at-Law

THIS DEED made this Eight day of October in the year one thousand nine hundred and seventy-three Between SAMUEL AYOUNG CHEE also called Samuel Ayoung of 66 First Avenue Mount Lambert in the Ward of St. Anns in Trinidad and Tobago Proprietor (hereinafter called "the Landlord" which expression where the context so admits shall include the reversioner or reversioners for the time being immediately expectant on the terms hereby created) of the one part and DIARAM RAMLAKHAN of 15 First Avneue Mount Lambert aforesaid Shop Priprietor (hereinafter called "the Tenant" which expression where the context so admits shall include his executors administrators and assigns) of the other part.

WITNESSETH as follows:

1. In consideration of the rent hereby reserved and of the Tenant's covenants hereinafter contained the Landlord HEREBY DEMISES unto the Tenant ALL AND SINGULAR the Two-storey building and the surrounding yard used and occupied in connection therewith comprised in the freehold property described in the SCHEDULE hereto TO HOLD the same unto the Tenant for the term of FOUR (4) YEARS from the first day of November 1973 Paying and Yielding therefor during the said term the yearly rent of SEVEN THOUSAND TWO HUNDRED DOLLARS ($7,200.00) payable by equal monthly payments of SIX HUNDRED DOLLARS ($600.00) in advance on the first day of each month during the said term.

2. The Tenant to the intent that the obligations may continue throughout the term hereby created hereby covenants with the Landlord as follows:-

(1) To pay the rent reserved on the days and in the manner aforesaid.

(2) To pay to the Landlord the amount of any increase or addition in the rates taxes and assessments over and above what are now payable in respect of the demised premises (save and except where such

EXHIBITS

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(continued)

increase or addition is attributed only to the annual rent having been increased to that herein reserved).

(3) To keep the demised premises and all additions thereto in good and tenantable repair and condition (reasonable ordinary wear and tear and damage by fire earthquake hurricane the Act of God and riot or civil commotion excepted).

(4) To keep all doors windows locks fastenings keys glass panes and all electrical and sanitary and water apparatus and fittings on the demised premises in good order and condition and to repair and replace the same whenever necessary and generally to effect all necessary repairs to the demised premises (other than repairs of a structural nature involving the roof or ceiling the outer walls and supporting beams and columns).

(5) To paint the demised premises whenever necessary and to keep the same in a clean and sanitary condition and to comply with the requirements of any notice served by the Local Health Authority in respect of the demised premises.

(6) Not to make any alterations in or additions to the demised premises without the prior consent in writing of the Landlord.

(7) Not without the prior consent in writing of the Landlord to use the Upper Floor of the demised premises for any purpose other than that of a private residence.

(8) Not to do or permit anything to be done on the demised premises which may cause a nuisance or annoyance to the Landlord or to the occupiers of houses or buildings in the neighbourhood.

(9) Not to assign underlet or part with the possession of the demised premises or any part thereof without the consent in writing of the Landlord: such consent however not to be unreasonably withheld in the case of a respectable and responsible person or persons.

(10) To allow the Landlord his agent or servant at all reasonable hours to enter and inspect the state and condition of the demised premises and to effect any repairs necessary for the preservation of the demised premises.

(11) To yield up the demised premises with the fixtures (except tenant's fixtures) and additions thereto

at the expiration or sooner determination of the term hereby created in good and tenantable repair and condition in accordance with the covenants hereinbefore contained.

3. The Landlord to the intent that the obligations may continue throughout the term hereby created hereby covenants with the Tenant as follows:-

(1) That the Tenant paying the rent reserved hereby and observing and performing the covenants and conditions on his part herein contained shall peaceably hold and enjoy the demised premises without any interruption by the Landlord or any person rightfully claiming under or in trust for him.

(2) To pay and discharge all rates taxes and assessments due and payable from time to time in respect of the demised premises save and except such increase or addition in the rates taxes and assessments as are payable by the Tenant as hereinbefore mentioned.

4. PROVIDED ALWAYS and it is hereby expressly agreed and declared as follows:-

(1) If the monthly payment of the rent hereby reserved or any part thereof shall be unpaid for 21 days after becoming payable (whether formally demanded or not) or if any covenant on the Tenant's part herein contained shall not be performed or observed or if the Tenant shall become bankrupt or, if an assign of the Tenant be a company, shall go into liquidation then and in any of the said cases it shall be lawful for the Landlord at any time hereafter to re-enter the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely dtermine but without prejudice to the right of action of the Landlord in respect of any breach of the Tenant's covenants herein contained.

(2) If the demised premises or any part thereof shall at any time during the term hereby created be destroyed or damaged by fire or earthquake so as to be rendered unfit for occupation by the Tenant then and in such case the rent hereby reserved or a proportionate part thereof according to the nature and extent of the damage shall be suspended until the demised premises or the portion thereof so destroyed or damaged shall have been rendered fit for occupation.

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(continued)

(3) The Tenant shall be entitled to determine the present demise at the end of any month by giving SIX (6) MONTHS' notice in writing to the Landlord of his intention to do so (or in lieu of notice by paying to the Landlord SIX (6) MONTHS' additional rent together with any rent then owing) and upon the expiration of such notice or the payment of such additional rent, the present demise and everything herein contained shall cease and be void but without prejudice to the right and remedies of either party against the other in respect of any antecedent claim or breach of covenant.

(4) At any time before the expiration of the term of FOUR (4) YEARS hereby created the Tenant shall be entitled to purchase the freehold property described in the SCHEDULE hereto subject to good title and free from encumbrances for the sum of ONE HUNDRED AND TWENTY THOUSAND DOLLARS ($120,000.00) and on condition that the said sum of ($120,000.00) shall be paid in full by the Tenant to the Landlord before the expiration of the term of FOUR (4) YEARS hereby created; and upon payment by the Tenant as aforesaid of the said purchase price as well as all arrears of rent hereunder (if any), the Landlord shall forthwith execute a Deed of Conveyance vesting the said freehold property in the Tenant in fee simple or as he shall direct.

IN WITNESS whereof the parties hereto have hereunto set their hands the day and year first herein written.

THE SCHEDULE ABOVE REFERRED TO

ALL AND SINGULAR that parcel of land situate at Mount Lambert in the Ward of St. Anns in Trinidad and Tobago comprising 5,880 Superficial Feet known as NO. 66 FIRST AVENUE - MOUNT LAMBERT and abutting on the North upon First Avenue Mount Lambert on the South upon No. 1 Mount Lambert Circular Road on the East upon Mount Lambert Circular Road and on the West upon No. 68 First Avenue Mount Lambert TOGETHER with the buildings thereon and the appurtenances thereto belonging.

SIGNED AND DELIVERED by the above-named SAMUEL AYOUNG CHEE as and for his act and deed in the presence of:) S. AYOUNG CHEE

Harry Smith,
30 St. Vincent Street,
Port-of-Spain,
Writing Clerk

And of me
Frank Allum Poon
Barrister-at-Law

SIGNED AND DELIVERED by the above-named DIARAM RAMLAKHAN as and for his act and deed in the presence of:)

D. RAMLAKHAN

Harry Smith,
30 St. Vincent Street,
Port-of-Spain,
Writing Clerk.

And of me
Frank Allum Poon
Barrister-at-Law

In the Court of Appeal

EXHIBITS
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(continued)

EXHIBITS

D.R.2 - COPY LETTER, WONG AND SANQUINETTE TO AYOUNG CHEE

29th June, 1977

Mr. Samuel Ayoung Choe,
68 First Avenue,
Mount Lambert,
San Juan.

Dear Sir,

Re: No. 66 First Avenue Mount Lambert leased to Diaram Ramlakhan by lease dated the 8/10/73 registered as No. 14159 of 1973.

We are instructed by our client Diaram Ramlakhan the lessee in the above mentioned lease to notify you that he is desirous of exercising the option to purchase the above numbered property contained in the said deed of lease for the sum therein stated.

Kindly note that our client is ready and willing to complete the said purchase and we should be glad if you will call at our office at any time to execute the deed of conveyance.

We may mention that after the expiration of the month of July 1977 no further rents will be paid under the deed of lease.

Yours faithfully,

Wong & Sanquinette.

No.13 of 1984

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

SAMUEL AYOUNG CHEE — Appellant (Defendant)

- and -

DIARAM RAMLAKHAN — Respondent (Plaintiff)

RECORD OF PROCEEDINGS

A.L. BRYDEN & WILLIAMS,
20 Old Queen Street,
London, SW1H 9HU

Solicitors for the Appellant

PHILIP CONWAY THOMAS & CO.,
39 Buckingham Gate,
London SW1E 6HB

Solicitors for the Respondent